

Message

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**From:** Bright, Wanda [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B783537AFFBC46119372799BDBAC87E4-BRIGHT, WANDA]  
**Sent:** 8/10/2020 1:03:15 PM  
**To:** Brennan, Thomas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78caa4c8d91743c887c1bb5dc8cdb369-Thomas Brennan]; Johnston, Khanna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4ee74eeb7ad744e58f6dbf7d2f20243b-Johnston, Khanna]  
**CC:** Armitage, Thomas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=06e0b9190f534cf0b6e34da284081a14-Armitage, Tom]; Yeow, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=613120791828428b8cbfd6178910d97e-Yeow, Arron]; Goodman, Iris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f4ffe5de125b4742bdbcfba522e1b65b-Goodman, Iris]; Bloomer, Bryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=18e2ed4508564c3f89428feb38673af9-Bloomer, Bryan]; Hill-Hammond, Shaunta [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=80c44b96421d4d83a7238f4a0c9a39-Shaunta Hill]; Stallworth, Holly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c6fce42405914fde80883507ea708e7f-Stallworth, Holly]; Shallal, Suhair [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e8249aa5a03d450bbe0d29d3f7603084-Shallal, Suhair]  
**Subject:** CMS AX-20-000-6119 - FYI...  
**Attachments:** FACA Letter.pdf; AX-20-000-6119-Federal Advisory Committee Response.pdf; Federal Advisory Committee Response.pdf

*Wanda Bright*

Ethics Officer  
SAB Staff Office  
202-564-2136  
202-565-2098 FAX



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

July 22, 2020

OFFICE OF MISSION SUPPORT

Ms. Genna Reed  
Lead Science and Policy Analyst  
Union of Concerned Scientists  
1825 K Street NW, Suite 800  
Washington, D.C. 20006

Dear Ms. Reed:

Thank you for your July 21, 2020, letter to the U.S. Environmental Protection Agency regarding the U.S. District Court for the Southern District of New York's recent ruling.

The court's decision does not require the EPA to revisit the membership compositions of committees that were already in place at the time of the decision. Further, it does not require the Agency to reinstate individuals who declined committee membership to preserve their grants.

EPA remains committed to maintaining fair and balanced advisory committees. The agency considers applicants and nominees who are interested and qualified, as appropriate to the nature and functions of the advisory committee and as required by statute, where applicable. For advisory committees requiring technical expertise, the agency targets persons with the necessary range of demonstrated professional or personal qualifications and expertise. For those individuals interested in serving as a committee member, EPA encourages them to apply. Committees publish notices on their websites and in the Federal Register soliciting nominations and detailing the application process.

Again, thank you for your letter. If you have further questions, you may contact Dan Coogan, acting director, Office of Resources of Business Operations, at [coogan.daniel@epa.gov](mailto:coogan.daniel@epa.gov) or at (202) 564-1862.

Sincerely,

DONNA  
VIZIAN

Donna J. Vizian  
Principal Deputy Assistant Administrator

Digitally signed by  
DONNA VIZIAN  
Date: 2020.07.24  
15:03:59 -04'00'

Tue Jul 21 13:36:23 EDT 2020  
"Hope, Brian" <Hope.Brian@epa.gov>  
FW: Request to reopen nomination process for EPA advisory committees  
To: "CMS.OEX" <cms.oex@epa.gov>; "Gunasekara, Mandy" <gunasekara.Mandy@epa.gov>; "Molina, Michael" <molina.michael@epa.gov>; "White, Elizabeth" <white.elizabeth@epa.gov>; "Hewitt, James" <hewitt.james@epa.gov>; "Grantham, Nancy" <Grantham.Nancy@epa.gov>; "Vizian, Donna" <Vizian.Donna@epa.gov>; "Leopold, Matt (OGC)" <Leopold.Matt@epa.gov>

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Reading file

**From:** Genna Reed <GReed@ucsusa.org>  
**Sent:** Tuesday, July 21, 2020 1:25 PM  
**To:** Wheeler, Andrew <wheeler.andrew@epa.gov>  
**Cc:** Louie, Nica <Louie.Nica@epa.gov>; Araujo, Javier <Araujo.Javier@epa.gov>; Armitage, Thomas <Armitage.Thomas@epa.gov>; O'Farrell, Thomas <OFarrell.Thomas@epa.gov>; gantner.ann-marie@epa.gov; Carrillo, Oscar <Carrillo.Oscar@epa.gov>; Jenkins, Fred <jenkins.fred@epa.gov>; Tracy, Tom <Tracy.Tom@epa.gov>; Subramanian, Hema <Subramanian.Hema@epa.gov>; Tejada, Matthew <Tejada.Matthew@epa.gov>; Chu, Ed <Chu.Ed@epa.gov>; Jewell, Shannon <jewell.shannon@epa.gov>; Knott, Steven <Knott.Steven@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Barnes, Edlynzia <Barnes.Edlynzia@epa.gov>; eargle.frances@epa.gov; Ward, Tracey <Ward.Tracey@epa.gov>; Knott, Steven <Knott.Steven@epa.gov>; Yeow, Aaron <Yeow.Aaron@epa.gov>; O'Farrell, Thomas <OFarrell.Thomas@epa.gov>; Green, Eugene <Green.Eugene@epa.gov>  
**Subject:** Request to reopen nomination process for EPA advisory committees

July 21, 2020

Dear Administrator Wheeler:

The undersigned organizations call upon EPA to reopen the nominations process for its advisory committees to solicit nominations of individuals EPA previously deemed ineligible to serve because of their receipt of EPA grant funding, and to reinstate individuals to committees from which they were unjustifiably removed. EPA's 2017 directive restricting individuals with grant funding from serving on committees was struck down in June by the U.S. District Court for the Southern District of New York, which ruled that the policy was arbitrary and capricious under the Administrative Procedure Act.<sup>[i]</sup> Soon after, the U.S. Court of Appeals for the D.C. Circuit agreed that the directive was illegal, ruling that EPA failed to give a rational explanation for its decision to exclude highly qualified grantees and failed to obtain the approval of the Office of Government Ethics.<sup>[ii]</sup> These decisions came after the U.S. Court of Appeals for the First Circuit rejected EPA's argument that the directive was not judicially reviewable.<sup>[iii]</sup> EPA has now announced that it will no longer apply this illegal policy.<sup>[iv]</sup>

EPA grants are funded through a highly competitive process on the basis of merit and promise. Recipients tend to be among the most knowledgeable experts on the issues upon which EPA is seeking advice. That is why, when this Administration issued a directive preventing such individuals from serving on advisory committees, so many took notice and spoke out in opposition.<sup>[v]</sup> Now that the directive has been rescinded, the Agency must ensure that the most qualified individuals in their fields have the opportunity to advise on critical science and policy issues.

Many EPA grant-funded scientists are at the top of their fields and possess critical, or even irreplaceable, highly relevant knowledge that the Agency needs to make health-protective and scientifically defensible policy decisions. In light of this and the Courts' decisions noted above, EPA should now provide an opportunity for EPA grant-funded experts to apply for or be nominated to positions on all EPA advisory committees. This should be done immediately for those committees for which EPA is already in the process of identifying candidates: EPA's Science Advisory Board and subcommittees,<sup>[vi]</sup> Science Advisory Committee on Chemicals,<sup>[vii]</sup> National Drinking Water Advisory Council,<sup>[viii]</sup> and National and Environmental Government Committees.<sup>[ix]</sup>

Further, for all individuals who were removed from boards or whose terms were not renewed because they were receiving EPA funding between the time the 2017 policy was announced and the present, EPA should notify them of the change in policy, solicit their interest, and, if the individuals are interested, reinstate them onto the advisory committees on which they previously served.

Without consideration of all such eligible scientists, EPA will continue to receive insufficient science advice. Thus, we further call upon the Agency to suspend any ongoing process to fill positions on these advisory committees until the restoration of committees and the nominations process for experts EPA previously deemed ineligible is completed. These steps would not address prior flawed changes made to advisory committees' composition and structure, such as those made to the Clean Air Scientific Advisory Committee for the particulate matter NAAQS review.<sup>[x]</sup> However, they would at least allow for a more diverse, qualified, and independent composition on EPA's advisory committees and would better ensure the Agency receives the best available science advice on matters protecting the environment and public health. If you have any questions or require additional information, please contact Genna Reed at the Union of Concerned Scientists at [GReed@ucsusa.org](mailto:GReed@ucsusa.org).

Sincerely,

Center for Science and Democracy, Union of Concerned Scientists

Earthjustice

Environmental Defense Fund

International Society for Children’s Health and the Environment

Natural Resources Defense Council

Physicians for Social Responsibility

Protect Democracy

CC:

- Nica Louie, DFO Children’s Health Protection Advisory Committee  
Javier Araujo, DFO National Environmental Education Advisory Board  
Thomas Armitage, DFO Science Advisory Board  
Thomas O’Farrell, DFO Human Studies Review Board  
Ann-Marie Gantner, DFO Good Neighbor Environmental Board  
Oscar Carrillo, DFO National Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation and the Governmental Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation
- Fred Jenkins, DFO Hazardous Waste Electronic Manifest System Advisory Board
- Thomas Tracy, DFO Board of Scientific Counselors
- Hema Subramian, DFO Farm, Ranch and Rural Communities Advisory Committee
- Matthew Tejada, DFO National Environmental Justice Advisory Council
- Edward Chu, DFO Environmental Financial Advisory Board
- Shannon Jewell, DFO Pesticide Program Dialogue Committee
- Steven M. Knott, DFO Science Advisory Committee on Chemicals; FIFRA SAP Panel
- Larry Weinstock, DFO Clean Air Act Advisory Committee
- Edlynzia Barnes, DFO Great Lakes Advisory Board
- Frances Eargle, DFO Local Government Advisory Committee
- Tracey M. Ward, DFO National Drinking Water Advisory Council
- Aaron Yeow, DFO Clean Air Scientific Advisory Committee

Genna Reed

Lead Science & Policy Analyst, Center for Science and Democracy

she / her / hers

Union of Concerned Scientists | 1825 K Street NW, Suite 800 | Washington, D.C. 20006

Phone: 202-331-6940 | Email: [GReed@ucsusa.org](mailto:GReed@ucsusa.org)

<sup>[i]</sup>*Nat. Res. Def. Council, Inc. v. U.S. Env’tl. Prot. Agency*, 438 F. Supp. 3d 220 (S.D.N.Y. 2020).

<sup>[ii]</sup> *Physicians for Soc. Responsibility v. Wheeler*, 956 F.3d 634 (D.C. Cir. 2020).

<sup>[iii]</sup>*Union of Concerned Scientists v. Wheeler*, 954 F.3d 11 (1st Cir. 2020).

[iv] U.S. Environmental Protection Agency (EPA). 2020. EPA Will Not Appeal Adverse SDNY Decision Regarding October 31, 2017 Federal Advisory

Committee Directive, June 24. Online at <https://www.epa.gov/newsreleases/epa-will-not-appeal-adverse-sdny-decision-regarding-october-31-2017-federal-advisory>, Accessed July 15, 2020.

[v] Union of Concerned Scientists. 2020. Pruitt Actions on EPA Advisory Board Undermine Independent Science, Put Americans at Risk, October 31. Online at <https://ucsusa.org/about/news/pruitt-actions-epa-advisory-board>, Accessed July 15, 2020.

[vi] EPA. Request for Nominations of Candidates to the EPA's Science Advisory Board (SAB) and SAB Standing Committees. Federal Register 85, no. 63 (April 1, 2020):18225. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-01/pdf/2020-06660.pdf>, Accessed July 15, 2020.

[vii] EPA. TSCA Science Advisory Committee on Chemicals; Request for Nominations. Federal Register 85, no. 55 (March 20, 2020):16094. Online at <https://www.govinfo.gov/content/pkg/FR-2020-03-20/pdf/2020-05827.pdf>, Accessed July 15, 2020.

[viii] EPA. The National Drinking Water Advisory Council: Request for Nominations. Federal Register 85, no. 114 (June 12, 2020):35930. Online at <https://www.govinfo.gov/content/pkg/FR-2020-06-12/pdf/2020-12727.pdf>, Accessed July 15, 2020.

[ix] EPA. Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation. Federal Register 85, no. 70 (April 10, 2020): 20267. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-10/pdf/2020-07527.pdf>, Accessed July 15, 2020.

[x] Independent Particulate Matter Review Panel. 2020. The Need for a Tighter Particulate-Matter Air-Quality Standard, June 10. *New England Journal of Medicine*. DOI: 10.1056/NEJMSb2011009. Online at <https://www.nejm.org/doi/full/10.1056/NEJMSb2011009>, Accessed July 15, 2020.

*Via e-mail July 21, 2020*

Administrator Andrew Wheeler  
Environmental Protection Agency  
1200 Pennsylvania Avenue N.W.  
Mail Code: 1101A  
Washington, D.C. 20460

**Re: Request to reopen nomination process for EPA advisory committees**

Dear Administrator Wheeler:

The undersigned organizations call upon EPA to reopen the nominations process for its advisory committees to solicit nominations of individuals EPA previously deemed ineligible to serve because of their receipt of EPA grant funding, and to reinstate individuals to committees from which they were unjustifiably removed. EPA's 2017 directive restricting individuals with grant funding from serving on committees was struck down in June by the U.S. District Court for the Southern District of New York, which ruled that the policy was arbitrary and capricious under the Administrative Procedure Act.<sup>1</sup> Soon after, the U.S. Court of Appeals for the D.C. Circuit agreed that the directive was illegal, ruling that EPA failed to give a rational explanation for its decision to exclude highly qualified grantees and failed to obtain the approval of the Office of Government Ethics.<sup>2</sup> These decisions came after the U.S. Court of Appeals for the First Circuit rejected EPA's argument that the directive was not judicially reviewable.<sup>3</sup> EPA has now announced that it will no longer apply this illegal policy.<sup>4</sup>

EPA grants are funded through a highly competitive process on the basis of merit and promise. Recipients tend to be among the most knowledgeable experts on the issues upon which EPA is seeking advice. That is why, when this Administration issued a directive preventing such individuals from serving on advisory committees, so many took notice and spoke out in opposition.<sup>5</sup> Now that the directive has been rescinded, the Agency must ensure that the most qualified individuals in their fields have the opportunity to advise on critical science and policy issues.

Many EPA grant-funded scientists are at the top of their fields and possess critical, or even irreplaceable, highly relevant knowledge that the Agency needs to make health-protective and scientifically defensible policy decisions. In light of this and the Courts' decisions noted above, EPA should now provide an opportunity for EPA grant-funded experts to apply for or be nominated to positions on all EPA advisory committees. This should be done immediately for those committees for which EPA is already in the process of identifying candidates: EPA's Science Advisory Board and subcommittees,<sup>6</sup> Science Advisory Committee on Chemicals,<sup>7</sup> National Drinking Water Advisory Council,<sup>8</sup> and National and Environmental Government Committees.<sup>9</sup>

Further, for all individuals who were removed from boards or whose terms were not renewed because they were receiving EPA funding between the time the 2017 policy was announced and the present, EPA should notify them of the change in policy, solicit their interest, and, if the individuals are interested, reinstate them onto the advisory committees on which they previously served.

Without consideration of all such eligible scientists, EPA will continue to receive insufficient science advice. Thus, we further call upon the Agency to suspend any ongoing process to fill positions on these advisory committees until the restoration of committees and the nominations process for experts EPA previously deemed ineligible is completed. These steps would not address prior flawed changes made to advisory committees' composition and structure, such as those made to the Clean Air Scientific Advisory Committee for the particulate matter NAAQS review.<sup>10</sup> However, they would at least allow for a more

diverse, qualified, and independent composition on EPA's advisory committees and would better ensure the Agency receives the best available science advice on matters protecting the environment and public health. If you have any questions or require additional information, please contact Genna Reed at the Union of Concerned Scientists at [GReed@ucsusa.org](mailto:GReed@ucsusa.org).

Sincerely,

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Earthjustice  
Environmental Defense Fund  
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Natural Resources Defense Council  
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Protect Democracy

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Ann-Marie Gantner, DFO Good Neighbor Environmental Board  
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Fred Jenkins, DFO Hazardous Waste Electronic Manifest System Advisory Board  
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<sup>1</sup> *Nat. Res. Def. Council, Inc. v. U.S. Env'tl. Prot. Agency*, 438 F. Supp. 3d 220 (S.D.N.Y. 2020).

<sup>2</sup> *Physicians for Soc. Responsibility v. Wheeler*, 956 F.3d 634 (D.C. Cir. 2020).

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<sup>4</sup> U.S. Environmental Protection Agency (EPA). 2020. EPA Will Not Appeal Adverse SDNY Decision Regarding October 31, 2017 Federal Advisory Committee Directive, June 24. Online at <https://www.epa.gov/newsreleases/epa-will-not-appeal-adverse-sdny-decision-regarding-october-31-2017-federal-advisory>, Accessed July 15, 2020.

<sup>5</sup> Union of Concerned Scientists. 2020. Pruitt Actions on EPA Advisory Board Undermine Independent Science, Put Americans at Risk, October 31. Online at <https://ucsusa.org/about/news/pruitt-actions-epa-advisory-board>, Accessed July 15, 2020.

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<sup>6</sup> EPA. Request for Nominations of Candidates to the EPA's Science Advisory Board (SAB) and SAB Standing Committees. Federal Register 85, no. 63 (April 1, 2020):18225. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-01/pdf/2020-06660.pdf>, Accessed July 15, 2020.

<sup>7</sup> EPA. TSCA Science Advisory Committee on Chemicals; Request for Nominations. Federal Register 85, no. 55 (March 20, 2020):16094. Online at <https://www.govinfo.gov/content/pkg/FR-2020-03-20/pdf/2020-05827.pdf>, Accessed July 15, 2020.

<sup>8</sup> EPA. The National Drinking Water Advisory Council: Request for Nominations. Federal Register 85, no. 114 (June 12, 2020):35930. Online at <https://www.govinfo.gov/content/pkg/FR-2020-06-12/pdf/2020-12727.pdf>, Accessed July 15, 2020.

<sup>9</sup> EPA. Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation. Federal Register 85, no. 70 (April 10, 2020): 20267. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-10/pdf/2020-07527.pdf>, Accessed July 15, 2020.

<sup>10</sup> Independent Particulate Matter Review Panel. 2020. The Need for a Tighter Particulate-Matter Air-Quality Standard, June 10. *New England Journal of Medicine*. DOI: 10.1056/NEJMs2011009. Online at <https://www.nejm.org/doi/full/10.1056/NEJMs2011009>, Accessed July 15, 2020.



**From:** Vizian, Donna on behalf of Ms. Vizian  
**To:** "GReed@ucsusa.org"  
**Cc:** Louie, Nica; Araujo, Javier; Armitage, Thomas; O'Farrell, Thomas; "gantner.ann-marie@epa.gov"; Carrillo, Oscar; Jenkins, Alexis; Jenkins, Fred; Tracy, Tom; Subramanian, Hema; Tejada, Matthew; Tejada, Matthew; Chu, Ed; Jewell, Shannon; Knott, Steven; Knott, Steven; Weinstock, Larry; Barnes, Edlynzia; "eargle.frances@epa.gov"; Ward, Tracey; Knott, Steven; Yeow, Aaron; Yeow, Aaron; O'Farrell, Thomas; Green, Eugene  
**Subject:** Federal Advisory Committee Response  
**Date:** Saturday, July 25, 2020 5:35:00 PM  
**Attachments:** AX-20-000-6119-Federal Advisory Committee Response.pdf

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Ms. Genna Reed  
Lead Science and Policy Analyst  
Union of Concerned Scientists  
1825 K Street NW, Suite 800  
Washington, D.C. 20006

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Sincerely,

//signed//  
Donna J. Vizian  
Principal Deputy Assistant Administrator

*Via e-mail July 21, 2020*

Administrator Andrew Wheeler  
Environmental Protection Agency  
1200 Pennsylvania Avenue N.W.  
Mail Code: 1101A  
Washington, D.C. 20460

**Re: Request to reopen nomination process for EPA advisory committees**

Dear Administrator Wheeler:

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Sincerely,

Center for Science and Democracy, Union of Concerned Scientists  
Earthjustice  
Environmental Defense Fund  
International Society for Children's Health and the Environment  
Natural Resources Defense Council  
Physicians for Social Responsibility  
Protect Democracy

CC:

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Javier Araujo, DFO National Environmental Education Advisory Board  
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Shannon Jewell, DFO Pesticide Program Dialogue Committee  
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Larry Weinstock, DFO Clean Air Act Advisory Committee  
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<sup>1</sup> *Nat. Res. Def. Council, Inc. v. U.S. Env'tl. Prot. Agency*, 438 F. Supp. 3d 220 (S.D.N.Y. 2020).

<sup>2</sup> *Physicians for Soc. Responsibility v. Wheeler*, 956 F.3d 634 (D.C. Cir. 2020).

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<sup>4</sup> U.S. Environmental Protection Agency (EPA). 2020. EPA Will Not Appeal Adverse SDNY Decision Regarding October 31, 2017 Federal Advisory Committee Directive, June 24. Online at <https://www.epa.gov/newsreleases/epa-will-not-appeal-adverse-sdny-decision-regarding-october-31-2017-federal-advisory>, Accessed July 15, 2020.

<sup>5</sup> Union of Concerned Scientists. 2020. Pruitt Actions on EPA Advisory Board Undermine Independent Science, Put Americans at Risk, October 31. Online at <https://ucsusa.org/about/news/pruitt-actions-epa-advisory-board>, Accessed July 15, 2020.

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<sup>7</sup> EPA. TSCA Science Advisory Committee on Chemicals; Request for Nominations. Federal Register 85, no. 55 (March 20, 2020):16094. Online at <https://www.govinfo.gov/content/pkg/FR-2020-03-20/pdf/2020-05827.pdf>, Accessed July 15, 2020.

<sup>8</sup> EPA. The National Drinking Water Advisory Council: Request for Nominations. Federal Register 85, no. 114 (June 12, 2020):35930. Online at <https://www.govinfo.gov/content/pkg/FR-2020-06-12/pdf/2020-12727.pdf>, Accessed July 15, 2020.

<sup>9</sup> EPA. Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation. Federal Register 85, no. 70 (April 10, 2020): 20267. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-10/pdf/2020-07527.pdf>, Accessed July 15, 2020.

<sup>10</sup> Independent Particulate Matter Review Panel. 2020. The Need for a Tighter Particulate-Matter Air-Quality Standard, June 10. *New England Journal of Medicine*. DOI: 10.1056/NEJMs2011009. Online at <https://www.nejm.org/doi/full/10.1056/NEJMs2011009>, Accessed July 15, 2020.

Message

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**From:** Genna Reed [GReed@ucsusa.org]  
**Sent:** 7/21/2020 5:25:17 PM  
**To:** Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]  
**CC:** Louie, Nica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6edf2e5abafe43c688b3f6f6cd0536ef-Louie, Nica]; Araujo, Javier [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e6f5c679d6cc43e8941665e792e7b303-Araujo, Javier]; Armitage, Thomas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=06e0b9190f534cf0b6e34da284081a14-Armitage, Tom]; O'Farrell, Thomas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4af53b2f4a4b43c8b5013a26c430d5d8-O'Farrell, Thomas]; gantner.ann-marie@epa.gov; Carrillo, Oscar [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c289d9c6160644bea1f7819aa8d75ebf-Ocarrill]; Jenkins, Fred [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=03c0b587c7cf4e808eaf4170440dd75a-Fred Jenkins]; Tracy, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d05f97a6faf946da8797211453cf0584-Tracy, Thomas]; Subramanian, Hema [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=65e089600e8b4724a2e85997849bd208-Subramanian, Hema]; Tejada, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6559971c9dcd4c689ca6ec6b2a8cb0ee-Tejada, Matthew]; Chu, Ed [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a7a6452e3e0941b4bb1fafa1ba1ae424-Chu, Edward]; Jewell, Shannon [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1862c405cf704ee692d5f61faff12688-Jewell, Sha]; Knott, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=24d2f36208d64beaaa5fdaf7fc29bce0-Knott, Steven]; Weinstock, Larry [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abf6ef85ed154d13aa590ea7c0addac2-Weinstock, Larry]; Barnes, Edlynzia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb3b68a81a174608bf6bc61e2af8876c-Barnes, Edl]; eargle.frances@epa.gov; Ward, Tracey [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c81f4c208c714cfa9625e11e015ac10a-tlward]; Knott, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=24d2f36208d64beaaa5fdaf7fc29bce0-Knott, Steven]; Yeow, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=613120791828428b8cbfd6178910d97e-Yeow, Arron]; O'Farrell, Thomas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4af53b2f4a4b43c8b5013a26c430d5d8-O'Farrell, Thomas]; Green, Eugene [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c2dbb63d76fb41039e3cfa426af1c69e-Green, Eugene]  
**Subject:** Request to reopen nomination process for EPA advisory committees  
**Attachments:** Sign-on FAC request to EPA Admin Wheeler 7.21.20.pdf

July 21, 2020

Dear Administrator Wheeler:

The undersigned organizations call upon EPA to reopen the nominations process for its advisory committees to solicit nominations of individuals EPA previously deemed ineligible to serve because of their receipt of EPA grant funding, and to reinstate individuals to committees from which they were unjustifiably removed. EPA's 2017 directive restricting individuals with grant funding from serving on committees was struck down in June by the U.S. District Court for the Southern District of New York, which ruled that the policy was arbitrary and capricious under the Administrative Procedure Act.<sup>[1]</sup> Soon after, the U.S. Court of Appeals for the D.C. Circuit agreed that the directive was illegal, ruling that

EPA failed to give a rational explanation for its decision to exclude highly qualified grantees and failed to obtain the approval of the Office of Government Ethics.<sup>[ii]</sup> These decisions came after the U.S. Court of Appeals for the First Circuit rejected EPA's argument that the directive was not judicially reviewable.<sup>[iii]</sup> EPA has now announced that it will no longer apply this illegal policy.<sup>[iv]</sup>

EPA grants are funded through a highly competitive process on the basis of merit and promise. Recipients tend to be among the most knowledgeable experts on the issues upon which EPA is seeking advice. That is why, when this Administration issued a directive preventing such individuals from serving on advisory committees, so many took notice and spoke out in opposition.<sup>[v]</sup> Now that the directive has been rescinded, the Agency must ensure that the most qualified individuals in their fields have the opportunity to advise on critical science and policy issues.

Many EPA grant-funded scientists are at the top of their fields and possess critical, or even irreplaceable, highly relevant knowledge that the Agency needs to make health-protective and scientifically defensible policy decisions. In light of this and the Courts' decisions noted above, EPA should now provide an opportunity for EPA grant-funded experts to apply for or be nominated to positions on all EPA advisory committees. This should be done immediately for those committees for which EPA is already in the process of identifying candidates: EPA's Science Advisory Board and subcommittees,<sup>[vi]</sup> Science Advisory Committee on Chemicals,<sup>[vii]</sup> National Drinking Water Advisory Council,<sup>[viii]</sup> and National and Environmental Government Committees.<sup>[ix]</sup>

Further, for all individuals who were removed from boards or whose terms were not renewed because they were receiving EPA funding between the time the 2017 policy was announced and the present, EPA should notify them of the change in policy, solicit their interest, and, if the individuals are interested, reinstate them onto the advisory committees on which they previously served.

Without consideration of all such eligible scientists, EPA will continue to receive insufficient science advice. Thus, we further call upon the Agency to suspend any ongoing process to fill positions on these advisory committees until the restoration of committees and the nominations process for experts EPA previously deemed ineligible is completed. These steps would not address prior flawed changes made to advisory committees' composition and structure, such as those made to the Clean Air Scientific Advisory Committee for the particulate matter NAAQS review.<sup>[x]</sup> However, they would at least allow for a more diverse, qualified, and independent composition on EPA's advisory committees and would better ensure the Agency receives the best available science advice on matters protecting the environment and public health. If you have any questions or require additional information, please contact Genna Reed at the Union of Concerned Scientists at [GReed@ucsusa.org](mailto:GReed@ucsusa.org).

Sincerely,

Center for Science and Democracy, Union of Concerned Scientists  
Earthjustice  
Environmental Defense Fund  
International Society for Children's Health and the Environment  
Natural Resources Defense Council  
Physicians for Social Responsibility  
Protect Democracy

CC:

Nica Louie, DFO Children's Health Protection Advisory Committee  
Javier Araujo, DFO National Environmental Education Advisory Board  
Thomas Armitage, DFO Science Advisory Board  
Thomas O'Farrell, DFO Human Studies Review Board  
Ann-Marie Gantner, DFO Good Neighbor Environmental Board  
Oscar Carrillo, DFO National Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation and the Governmental Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation

Fred Jenkins, DFO Hazardous Waste Electronic Manifest System Advisory Board  
Thomas Tracy, DFO Board of Scientific Counselors  
Hema Subramian, DFO Farm, Ranch and Rural Communities Advisory Committee  
Matthew Tejada, DFO National Environmental Justice Advisory Council  
Edward Chu, DFO Environmental Financial Advisory Board  
Shannon Jewell, DFO Pesticide Program Dialogue Committee  
Steven M. Knott, DFO Science Advisory Committee on Chemicals; FIFRA SAP Panel  
Larry Weinstock, DFO Clean Air Act Advisory Committee  
Edlynzia Barnes, DFO Great Lakes Advisory Board  
Frances Eargle, DFO Local Government Advisory Committee  
Tracey M. Ward, DFO National Drinking Water Advisory Council  
Aaron Yeow, DFO Clean Air Scientific Advisory Committee

Genna Reed  
Lead Science & Policy Analyst, Center for Science and Democracy  
she / her / hers

Union of Concerned Scientists | 1825 K Street NW, Suite 800 | Washington, D.C. 20006  
Phone: 202-331-6940 | Email: [GReed@ucsusa.org](mailto:GReed@ucsusa.org)

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[i] *Nat. Res. Def. Council, Inc. v. U.S. Envtl. Prot. Agency*, 438 F. Supp. 3d 220 (S.D.N.Y. 2020).

[ii] *Physicians for Soc. Responsibility v. Wheeler*, 956 F.3d 634 (D.C. Cir. 2020).

[iii] *Union of Concerned Scientists v. Wheeler*, 954 F.3d 11 (1st Cir. 2020).

[iv] U.S. Environmental Protection Agency (EPA). 2020. EPA Will Not Appeal Adverse SDNY Decision Regarding October 31, 2017 Federal Advisory Committee Directive, June 24. Online at <https://www.epa.gov/newsreleases/epa-will-not-appeal-adverse-sdny-decision-regarding-october-31-2017-federal-advisory>, Accessed July 15, 2020.

[v] Union of Concerned Scientists. 2020. Pruitt Actions on EPA Advisory Board Undermine Independent Science, Put Americans at Risk, October 31. Online at <https://ucsusa.org/about/news/pruitt-actions-epa-advisory-board>, Accessed July 15, 2020.

[vi] EPA. Request for Nominations of Candidates to the EPA's Science Advisory Board (SAB) and SAB Standing Committees. Federal Register 85, no. 63 (April 1, 2020):18225. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-01/pdf/2020-06660.pdf>, Accessed July 15, 2020.

[vii] EPA. TSCA Science Advisory Committee on Chemicals; Request for Nominations. Federal Register 85, no. 55 (March 20, 2020):16094. Online at <https://www.govinfo.gov/content/pkg/FR-2020-03-20/pdf/2020-05827.pdf>, Accessed July 15, 2020.

[viii] EPA. The National Drinking Water Advisory Council: Request for Nominations. Federal Register 85, no. 114 (June 12, 2020):35930. Online at <https://www.govinfo.gov/content/pkg/FR-2020-06-12/pdf/2020-12727.pdf>, Accessed July 15, 2020.

[ix] EPA. Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation. Federal Register 85, no. 70 (April 10, 2020): 20267. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-10/pdf/2020-07527.pdf>, Accessed July 15, 2020.

[x] Independent Particulate Matter Review Panel. 2020. The Need for a Tighter Particulate-Matter Air-Quality Standard, June 10. *New England Journal of Medicine*. DOI: 10.1056/NEJMSb2011009. Online at <https://www.nejm.org/doi/full/10.1056/NEJMSb2011009>, Accessed July 15, 2020.

Tue Jul 21 13:36:23 EDT 2020  
"Hope, Brian" <Hope.Brian@epa.gov>  
FW: Request to reopen nomination process for EPA advisory committees  
To: "CMS.OEX" <cms.oex@epa.gov>; "Gunasekara, Mandy" <gunasekara.Mandy@epa.gov>; "Molina, Michael" <molina.michael@epa.gov>; "White, Elizabeth" <white.elizabeth@epa.gov>; "Hewitt, James" <hewitt.james@epa.gov>; "Grantham, Nancy" <Grantham.Nancy@epa.gov>; "Vizian, Donna" <Vizian.Donna@epa.gov>; "Leopold, Matt (OGC)" <Leopold.Matt@epa.gov>

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Reading file

**From:** Genna Reed <GReed@ucsusa.org>  
**Sent:** Tuesday, July 21, 2020 1:25 PM  
**To:** Wheeler, Andrew <wheeler.andrew@epa.gov>  
**Cc:** Louie, Nica <Louie.Nica@epa.gov>; Araujo, Javier <Araujo.Javier@epa.gov>; Armitage, Thomas <Armitage.Thomas@epa.gov>; O'Farrell, Thomas <OFarrell.Thomas@epa.gov>; gantner.ann-marie@epa.gov; Carrillo, Oscar <Carrillo.Oscar@epa.gov>; Jenkins, Fred <jenkins.fred@epa.gov>; Tracy, Tom <Tracy.Tom@epa.gov>; Subramanian, Hema <Subramanian.Hema@epa.gov>; Tejada, Matthew <Tejada.Matthew@epa.gov>; Chu, Ed <Chu.Ed@epa.gov>; Jewell, Shannon <jewell.shannon@epa.gov>; Knott, Steven <Knott.Steven@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Barnes, Edlynzia <Barnes.Edlynzia@epa.gov>; eargle.frances@epa.gov; Ward, Tracey <Ward.Tracey@epa.gov>; Knott, Steven <Knott.Steven@epa.gov>; Yeow, Aaron <Yeow.Aaron@epa.gov>; O'Farrell, Thomas <OFarrell.Thomas@epa.gov>; Green, Eugene <Green.Eugene@epa.gov>  
**Subject:** Request to reopen nomination process for EPA advisory committees

July 21, 2020

Dear Administrator Wheeler:

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Sincerely,

Center for Science and Democracy, Union of Concerned Scientists

Earthjustice

Environmental Defense Fund

International Society for Children’s Health and the Environment

Natural Resources Defense Council

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- Tracey M. Ward, DFO National Drinking Water Advisory Council
- Aaron Yeow, DFO Clean Air Scientific Advisory Committee

Genna Reed

Lead Science & Policy Analyst, Center for Science and Democracy

she / her / hers

Union of Concerned Scientists | 1825 K Street NW, Suite 800 | Washington, D.C. 20006

Phone: 202-331-6940 | Email: [GReed@ucsusa.org](mailto:GReed@ucsusa.org)

[i] *Nat. Res. Def. Council, Inc. v. U.S. Env’tl. Prot. Agency*, 438 F. Supp. 3d 220 (S.D.N.Y. 2020).

[ii] *Physicians for Soc. Responsibility v. Wheeler*, 956 F.3d 634 (D.C. Cir. 2020).

[iii] *Union of Concerned Scientists v. Wheeler*, 954 F.3d 11 (1st Cir. 2020).

[iv] U.S. Environmental Protection Agency (EPA). 2020. EPA Will Not Appeal Adverse SDNY Decision Regarding October 31, 2017 Federal Advisory

Committee Directive, June 24. Online at <https://www.epa.gov/newsreleases/epa-will-not-appeal-adverse-sdny-decision-regarding-october-31-2017-federal-advisory>, Accessed July 15, 2020.

[v] Union of Concerned Scientists. 2020. Pruitt Actions on EPA Advisory Board Undermine Independent Science, Put Americans at Risk, October 31. Online at <https://ucsusa.org/about/news/pruitt-actions-epa-advisory-board>, Accessed July 15, 2020.

[vi] EPA. Request for Nominations of Candidates to the EPA's Science Advisory Board (SAB) and SAB Standing Committees. Federal Register 85, no. 63 (April 1, 2020):18225. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-01/pdf/2020-06660.pdf>, Accessed July 15, 2020.

[vii] EPA. TSCA Science Advisory Committee on Chemicals; Request for Nominations. Federal Register 85, no. 55 (March 20, 2020):16094. Online at <https://www.govinfo.gov/content/pkg/FR-2020-03-20/pdf/2020-05827.pdf>, Accessed July 15, 2020.

[viii] EPA. The National Drinking Water Advisory Council: Request for Nominations. Federal Register 85, no. 114 (June 12, 2020):35930. Online at <https://www.govinfo.gov/content/pkg/FR-2020-06-12/pdf/2020-12727.pdf>, Accessed July 15, 2020.

[ix] EPA. Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation. Federal Register 85, no. 70 (April 10, 2020): 20267. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-10/pdf/2020-07527.pdf>, Accessed July 15, 2020.

[x] Independent Particulate Matter Review Panel. 2020. The Need for a Tighter Particulate-Matter Air-Quality Standard, June 10. *New England Journal of Medicine*. DOI: 10.1056/NEJMSb2011009. Online at <https://www.nejm.org/doi/full/10.1056/NEJMSb2011009>, Accessed July 15, 2020.

*Via e-mail July 21, 2020*

Administrator Andrew Wheeler  
Environmental Protection Agency  
1200 Pennsylvania Avenue N.W.  
Mail Code: 1101A  
Washington, D.C. 20460

**Re: Request to reopen nomination process for EPA advisory committees**

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Earthjustice  
Environmental Defense Fund  
International Society for Children's Health and the Environment  
Natural Resources Defense Council  
Physicians for Social Responsibility  
Protect Democracy

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<sup>1</sup> *Nat. Res. Def. Council, Inc. v. U.S. Env'tl. Prot. Agency*, 438 F. Supp. 3d 220 (S.D.N.Y. 2020).

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<sup>4</sup> U.S. Environmental Protection Agency (EPA). 2020. EPA Will Not Appeal Adverse SDNY Decision Regarding October 31, 2017 Federal Advisory Committee Directive, June 24. Online at <https://www.epa.gov/newsreleases/epa-will-not-appeal-adverse-sdny-decision-regarding-october-31-2017-federal-advisory>, Accessed July 15, 2020.

<sup>5</sup> Union of Concerned Scientists. 2020. Pruitt Actions on EPA Advisory Board Undermine Independent Science, Put Americans at Risk, October 31. Online at <https://ucsusa.org/about/news/pruitt-actions-epa-advisory-board>, Accessed July 15, 2020.

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<sup>6</sup> EPA. Request for Nominations of Candidates to the EPA's Science Advisory Board (SAB) and SAB Standing Committees. Federal Register 85, no. 63 (April 1, 2020):18225. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-01/pdf/2020-06660.pdf>, Accessed July 15, 2020.

<sup>7</sup> EPA. TSCA Science Advisory Committee on Chemicals; Request for Nominations. Federal Register 85, no. 55 (March 20, 2020):16094. Online at <https://www.govinfo.gov/content/pkg/FR-2020-03-20/pdf/2020-05827.pdf>, Accessed July 15, 2020.

<sup>8</sup> EPA. The National Drinking Water Advisory Council: Request for Nominations. Federal Register 85, no. 114 (June 12, 2020):35930. Online at <https://www.govinfo.gov/content/pkg/FR-2020-06-12/pdf/2020-12727.pdf>, Accessed July 15, 2020.

<sup>9</sup> EPA. Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation. Federal Register 85, no. 70 (April 10, 2020): 20267. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-10/pdf/2020-07527.pdf>, Accessed July 15, 2020.

<sup>10</sup> Independent Particulate Matter Review Panel. 2020. The Need for a Tighter Particulate-Matter Air-Quality Standard, June 10. *New England Journal of Medicine*. DOI: 10.1056/NEJMs2011009. Online at <https://www.nejm.org/doi/full/10.1056/NEJMs2011009>, Accessed July 15, 2020.

Message

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**From:** Hope, Brian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C27B55619FB248CC8776FC46CD3F8B0D-BHOPE]  
**Sent:** 7/21/2020 5:36:23 PM  
**To:** CMS.OEX [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a4a32621c51b423daeb14675a48ade58-CMS.OEX]  
**CC:** Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f639ea28af4c455493939e3129260707-Gunasekara,]; Molina, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c1d68da1a4587866e1850f22a6ae5-Molina, Mic]; White, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f8af641a6306479c9026142ef3b02bd7-White, Eliz]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc9b45d9861a45af94c4fb0d29f713c0-Hewitt, Jam]; Grantham, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=12a3c2ed7158417fb0bb1b1b72a8cfb0-Grantham, Nancy]; Vizian, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cb2401bf8d4f441dbf27f21e122be2c5-Vizian, Donna]; Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]  
**Subject:** FW: Request to reopen nomination process for EPA advisory committees  
**Attachments:** Sign-on FAC request to EPA Admin Wheeler 7.21.20.pdf

Reading file

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**From:** Genna Reed <GReed@ucsusa.org>  
**Sent:** Tuesday, July 21, 2020 1:25 PM  
**To:** Wheeler, Andrew <wheeler.andrew@epa.gov>  
**Cc:** Louie, Nica <Louie.Nica@epa.gov>; Araujo, Javier <Araujo.Javier@epa.gov>; Armitage, Thomas <Armitage.Thomas@epa.gov>; O'Farrell, Thomas <OFarrell.Thomas@epa.gov>; gantner.ann-marie@epa.gov; Carrillo, Oscar <Carrillo.Oscar@epa.gov>; Jenkins, Fred <jenkins.fred@epa.gov>; Tracy, Tom <Tracy.Tom@epa.gov>; Subramanian, Hema <Subramanian.Hema@epa.gov>; Tejada, Matthew <Tejada.Matthew@epa.gov>; Chu, Ed <Chu.Ed@epa.gov>; Jewell, Shannon <jewell.shannon@epa.gov>; Knott, Steven <Knott.Steven@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Barnes, Edlynzia <Barnes.Edlynzia@epa.gov>; eargle.frances@epa.gov; Ward, Tracey <Ward.Tracey@epa.gov>; Knott, Steven <Knott.Steven@epa.gov>; Yeow, Aaron <Yeow.Aaron@epa.gov>; O'Farrell, Thomas <OFarrell.Thomas@epa.gov>; Green, Eugene <Green.Eugene@epa.gov>  
**Subject:** Request to reopen nomination process for EPA advisory committees

July 21, 2020

Dear Administrator Wheeler:

The undersigned organizations call upon EPA to reopen the nominations process for its advisory committees to solicit nominations of individuals EPA previously deemed ineligible to serve because of their receipt of EPA grant funding, and to reinstate individuals to committees from which they were unjustifiably removed. EPA's 2017 directive restricting individuals with grant funding from serving on committees was struck down in June by the U.S. District Court for the Southern District of New York, which ruled that the policy was arbitrary and capricious under the Administrative Procedure Act.<sup>[i]</sup> Soon after, the U.S. Court of Appeals for the D.C. Circuit agreed that the directive was illegal, ruling that EPA failed to give a rational explanation for its decision to exclude highly qualified grantees and failed to obtain the approval of the Office of Government Ethics.<sup>[ii]</sup> These decisions came after the U.S. Court of Appeals for the First Circuit rejected EPA's argument that the directive was not judicially reviewable.<sup>[iii]</sup> EPA has now announced that it will no longer apply this illegal policy.<sup>[iv]</sup>

EPA grants are funded through a highly competitive process on the basis of merit and promise. Recipients tend to be among the most knowledgeable experts on the issues upon which EPA is seeking advice. That is why, when this Administration issued a directive preventing such individuals from serving on advisory committees, so many took notice and spoke out in opposition.<sup>[v]</sup> Now that the directive has been rescinded, the Agency must ensure that the most qualified individuals in their fields have the opportunity to advise on critical science and policy issues.

Many EPA grant-funded scientists are at the top of their fields and possess critical, or even irreplaceable, highly relevant knowledge that the Agency needs to make health-protective and scientifically defensible policy decisions. In light of this and the Courts' decisions noted above, EPA should now provide an opportunity for EPA grant-funded experts to apply for or be nominated to positions on all EPA advisory committees. This should be done immediately for those committees for which EPA is already in the process of identifying candidates: EPA's Science Advisory Board and subcommittees,<sup>[vi]</sup> Science Advisory Committee on Chemicals,<sup>[vii]</sup> National Drinking Water Advisory Council,<sup>[viii]</sup> and National and Environmental Government Committees.<sup>[ix]</sup>

Further, for all individuals who were removed from boards or whose terms were not renewed because they were receiving EPA funding between the time the 2017 policy was announced and the present, EPA should notify them of the change in policy, solicit their interest, and, if the individuals are interested, reinstate them onto the advisory committees on which they previously served.

Without consideration of all such eligible scientists, EPA will continue to receive insufficient science advice. Thus, we further call upon the Agency to suspend any ongoing process to fill positions on these advisory committees until the restoration of committees and the nominations process for experts EPA previously deemed ineligible is completed. These steps would not address prior flawed changes made to advisory committees' composition and structure, such as those made to the Clean Air Scientific Advisory Committee for the particulate matter NAAQS review.<sup>[x]</sup> However, they would at least allow for a more diverse, qualified, and independent composition on EPA's advisory committees and would better ensure the Agency receives the best available science advice on matters protecting the environment and public health. If you have any questions or require additional information, please contact Genna Reed at the Union of Concerned Scientists at [GReed@ucsusa.org](mailto:GReed@ucsusa.org).

Sincerely,

Center for Science and Democracy, Union of Concerned Scientists  
Earthjustice  
Environmental Defense Fund  
International Society for Children's Health and the Environment  
Natural Resources Defense Council  
Physicians for Social Responsibility  
Protect Democracy

CC:

Nica Louie, DFO Children's Health Protection Advisory Committee  
Javier Araujo, DFO National Environmental Education Advisory Board  
Thomas Armitage, DFO Science Advisory Board  
Thomas O'Farrell, DFO Human Studies Review Board  
Ann-Marie Gantner, DFO Good Neighbor Environmental Board  
Oscar Carrillo, DFO National Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation and the Governmental Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation  
Fred Jenkins, DFO Hazardous Waste Electronic Manifest System Advisory Board  
Thomas Tracy, DFO Board of Scientific Counselors  
Hema Subramian, DFO Farm, Ranch and Rural Communities Advisory Committee  
Matthew Tejada, DFO National Environmental Justice Advisory Council  
Edward Chu, DFO Environmental Financial Advisory Board

Shannon Jewell, DFO Pesticide Program Dialogue Committee  
Steven M. Knott, DFO Science Advisory Committee on Chemicals; FIFRA SAP Panel  
Larry Weinstock, DFO Clean Air Act Advisory Committee  
Edlynzia Barnes, DFO Great Lakes Advisory Board  
Frances Eargle, DFO Local Government Advisory Committee  
Tracey M. Ward, DFO National Drinking Water Advisory Council  
Aaron Yeow, DFO Clean Air Scientific Advisory Committee

Genna Reed  
Lead Science & Policy Analyst, Center for Science and Democracy  
she / her / hers

Union of Concerned Scientists | 1825 K Street NW, Suite 800 | Washington, D.C. 20006  
Phone: 202-331-6940 | Email: [GReed@ucsusa.org](mailto:GReed@ucsusa.org)

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[i] *Nat. Res. Def. Council, Inc. v. U.S. Envtl. Prot. Agency*, 438 F. Supp. 3d 220 (S.D.N.Y. 2020).

[ii] *Physicians for Soc. Responsibility v. Wheeler*, 956 F.3d 634 (D.C. Cir. 2020).

[iii] *Union of Concerned Scientists v. Wheeler*, 954 F.3d 11 (1st Cir. 2020).

[iv] U.S. Environmental Protection Agency (EPA). 2020. EPA Will Not Appeal Adverse SDNY Decision Regarding October 31, 2017 Federal Advisory Committee Directive, June 24. Online at <https://www.epa.gov/newsreleases/epa-will-not-appeal-adverse-sdny-decision-regarding-october-31-2017-federal-advisory>, Accessed July 15, 2020.

[v] Union of Concerned Scientists. 2020. Pruitt Actions on EPA Advisory Board Undermine Independent Science, Put Americans at Risk, October 31. Online at <https://ucsusa.org/about/news/pruitt-actions-epa-advisory-board>, Accessed July 15, 2020.

[vi] EPA. Request for Nominations of Candidates to the EPA's Science Advisory Board (SAB) and SAB Standing Committees. Federal Register 85, no. 63 (April 1, 2020):18225. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-01/pdf/2020-06660.pdf>, Accessed July 15, 2020.

[vii] EPA. TSCA Science Advisory Committee on Chemicals; Request for Nominations. Federal Register 85, no. 55 (March 20, 2020):16094. Online at <https://www.govinfo.gov/content/pkg/FR-2020-03-20/pdf/2020-05827.pdf>, Accessed July 15, 2020.

[viii] EPA. The National Drinking Water Advisory Council: Request for Nominations. Federal Register 85, no. 114 (June 12, 2020):35930. Online at <https://www.govinfo.gov/content/pkg/FR-2020-06-12/pdf/2020-12727.pdf>, Accessed July 15, 2020.

[ix] EPA. Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation. Federal Register 85, no. 70 (April 10, 2020): 20267. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-10/pdf/2020-07527.pdf>, Accessed July 15, 2020.

[x] Independent Particulate Matter Review Panel. 2020. The Need for a Tighter Particulate-Matter Air-Quality Standard, June 10. *New England Journal of Medicine*. DOI: 10.1056/NEJMs2011009. Online at <https://www.nejm.org/doi/full/10.1056/NEJMs2011009>, Accessed July 15, 2020.



Message

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**From:** Johnston, Khanna [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4EE74EEB7AD744E58F6DBF7D2F20243B-JOHNSTON, KHANNA]  
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**To:** Yeow, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=613120791828428b8cbfd6178910d97e-Yeow, Arron]  
**Subject:** Fwd: Request to reopen nomination process for EPA advisory committees  
**Attachments:** Sign-on FAC request to EPA Admin Wheeler 7.21.20.pdf; ATT00001.htm

Thank you Aaron.

\*\*\*\*\*

Khanna Johnston, Deputy Director  
Science Advisory Board  
Sent from my iPhone

Begin forwarded message:

**From:** "Yeow, Aaron" <Yeow.Aaron@epa.gov>  
**Date:** July 21, 2020 at 1:36:36 PM EDT  
**To:** AO SAB EVERYONE <AO\_SAB\_EVERYONE@epa.gov>  
**Subject:** FW: Request to reopen nomination process for EPA advisory committees

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**From:** Genna Reed <GReed@ucsusa.org>  
**Sent:** Tuesday, July 21, 2020 1:25 PM  
**To:** Wheeler, Andrew <wheeler.andrew@epa.gov>  
**Cc:** Louie, Nica <Louie.Nica@epa.gov>; Araujo, Javier <Araujo.Javier@epa.gov>; Armitage, Thomas <Armitage.Thomas@epa.gov>; O'Farrell, Thomas <OFarrell.Thomas@epa.gov>; gantner.ann-marie@epa.gov; Carrillo, Oscar <Carrillo.Oscar@epa.gov>; Jenkins, Fred <jenkins.fred@epa.gov>; Tracy, Tom <Tracy.Tom@epa.gov>; Subramanian, Hema <Subramanian.Hema@epa.gov>; Tejada, Matthew <Tejada.Matthew@epa.gov>; Chu, Ed <Chu.Ed@epa.gov>; Jewell, Shannon <jewell.shannon@epa.gov>; Knott, Steven <Knott.Steven@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Barnes, Edlynzia <Barnes.Edlynzia@epa.gov>; eargle.frances@epa.gov; Ward, Tracey <Ward.Tracey@epa.gov>; Knott, Steven <Knott.Steven@epa.gov>; Yeow, Aaron <Yeow.Aaron@epa.gov>; O'Farrell, Thomas <OFarrell.Thomas@epa.gov>; Green, Eugene <Green.Eugene@epa.gov>  
**Subject:** Request to reopen nomination process for EPA advisory committees

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Appeals for the First Circuit rejected EPA's argument that the directive was not judicially reviewable.<sup>[iii]</sup> EPA has now announced that it will no longer apply this illegal policy.<sup>[iv]</sup>

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Sincerely,

Center for Science and Democracy, Union of Concerned Scientists  
Earthjustice  
Environmental Defense Fund  
International Society for Children's Health and the Environment  
Natural Resources Defense Council  
Physicians for Social Responsibility  
Protect Democracy

CC:

Nica Louie, DFO Children's Health Protection Advisory Committee  
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Shannon Jewell, DFO Pesticide Program Dialogue Committee  
Steven M. Knott, DFO Science Advisory Committee on Chemicals; FIFRA SAP Panel  
Larry Weinstock, DFO Clean Air Act Advisory Committee  
Edlynzia Barnes, DFO Great Lakes Advisory Board  
Frances Eargle, DFO Local Government Advisory Committee  
Tracey M. Ward, DFO National Drinking Water Advisory Council  
Aaron Yeow, DFO Clean Air Scientific Advisory Committee

Genna Reed  
Lead Science & Policy Analyst, Center for Science and Democracy  
she / her / hers

Union of Concerned Scientists | 1825 K Street NW, Suite 800 | Washington, D.C. 20006  
Phone: 202-331-6940 | Email: [GReed@ucsusa.org](mailto:GReed@ucsusa.org)

<!--[if !supportEndnotes]-->

<!--[endif]-->

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[i] *Nat. Res. Def. Council, Inc. v. U.S. Envtl. Prot. Agency*, 438 F. Supp. 3d 220 (S.D.N.Y. 2020).

[ii] *Physicians for Soc. Responsibility v. Wheeler*, 956 F.3d 634 (D.C. Cir. 2020).

[iii] *Union of Concerned Scientists v. Wheeler*, 954 F.3d 11 (1st Cir. 2020).

[iv] U.S. Environmental Protection Agency (EPA). 2020. EPA Will Not Appeal Adverse SDNY Decision Regarding October 31, 2017 Federal Advisory Committee Directive, June 24. Online at <https://www.epa.gov/newsreleases/epa-will-not-appeal-adverse-sdny-decision-regarding-october-31-2017-federal-advisory>, Accessed July 15, 2020.

[v] Union of Concerned Scientists. 2020. Pruitt Actions on EPA Advisory Board Undermine Independent Science, Put Americans at Risk, October 31. Online at <https://ucsusa.org/about/news/pruitt-actions-epa-advisory-board>, Accessed July 15, 2020.

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[vii] EPA. TSCA Science Advisory Committee on Chemicals; Request for Nominations. Federal Register 85, no. 55 (March 20, 2020):16094. Online at <https://www.govinfo.gov/content/pkg/FR-2020-03-20/pdf/2020-05827.pdf>, Accessed July 15, 2020.

[viii] EPA. The National Drinking Water Advisory Council: Request for Nominations. Federal Register 85, no. 114 (June 12, 2020):35930. Online at <https://www.govinfo.gov/content/pkg/FR-2020-06-12/pdf/2020-12727.pdf>, Accessed July 15, 2020.

[ix] EPA. Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation. Federal Register 85, no. 70 (April 10, 2020): 20267. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-10/pdf/2020-07527.pdf>, Accessed July 15, 2020.

[x] Independent Particulate Matter Review Panel. 2020. The Need for a Tighter Particulate-Matter Air-Quality Standard, June 10. *New England Journal of Medicine*. DOI: 10.1056/NEJMs2011009. Online at <https://www.nejm.org/doi/full/10.1056/NEJMs2011009>, Accessed July 15, 2020.

July 30<sup>th</sup>, 2020

**Comments submitted from  
Natural Resources Defense Council,  
Earthjustice, and  
Pesticide Action Network North America**

On the FIFRA Scientific Advisory Panel;  
Request for Nominations of Ad Hoc Expert Reviewers  
to consider and review the use of new approach methodologies (NAMs)  
to derive extrapolation factors and evaluate developmental neurotoxicity (DNT)  
for human health risk assessment.

Docket ID EPA-HQ-OPP-2020-0263

Submitted electronically via [www.regulations.gov](http://www.regulations.gov)

We appreciate the opportunity to provide comments in advance of the selection of members to the FIFRA Science Advisory Panel on the use of new approach methodologies to derive extrapolation factors and evaluate developmental neurotoxicity for human health risk assessment.<sup>1</sup> Our groups have no direct or indirect financial or fiduciary interest in the manufacture or sale of any chemical or methodology that would be the subject of the deliberations of this Committee.

**The work of this Panel will directly benefit pesticide companies and consultants**

The work of this panel is to, “consider and review the use of new approach methodologies (NAMs) to derive extrapolation factors and evaluate developmental neurotoxicity for human health risk assessment.” This panel will be the first FACA peer review of the application of these new methods by EPA to evaluate developmental neurotoxicity. Moreover, EPA specifically states in its Issue Paper that, “EPA’s OPP is also interested in using NAMs to reduce the reliance on default assumptions for risk assessment, including the application of 10X default uncertainty factors each for interspecies and intraspecies extrapolations” (EPA Issue Paper, p. 5). That is, the Pesticide Office hopes to use information from NAMs to reduce or replace default uncertainty factors that have long been required to provide an added measure of protection for vulnerable and sensitive individuals. People needing protection include pregnant women and children, elders, people with chronic or underlying health conditions, and farmworkers and others with regular exposure to many pesticides and other harmful chemicals.

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<sup>1</sup> <https://www.regulations.gov/docket?D=EPA-HQ-OPP-2020-0263>

Of eight charge questions to be considered by the SAP, two of them pertain to default adjustment factors, for which the Pesticide Office is directing the SAP to consider a paper by Exponent, a company that is hired by industry to defend products and processes associated with harm to public health.<sup>2</sup> And, leaving no doubt what entities are served by Exponent's paper, it lists three agrochemical companies as sponsors: AMVAC Chemical Corporation; FMC Corporation; Gowan Company.

The Exponent industry report concludes that there is, "very little evidence for effects among different subpopulations" with regards to intrahuman variability in acetyl cholinesterase (AChE) inhibition and suggests that the current 'intrahuman [pharmacodynamic] factor' of 3X is too high (Exponent report, p. 35-36). If the Pesticide Office were to adopt the Exponent report findings, it would almost certainly lead to reductions in the default adjustment factors, reductions in risk estimates, and ultimately weakened pesticide regulations that benefit pesticide registrants, including those that sponsored the Exponent report. This would weaken health protections by the following actions: expanded pesticide approvals; increased allowable application rates; shortened re-entry intervals; reduced PPE requirements for farmworkers; increased residues in food and water.<sup>3</sup>

**Request that EPA coordinate its efforts with the California EPA working group to identify key characteristics for neurotoxicants and developmental neurotoxicants**

Given the far-reaching public health implications of this panel, it is alarming that the Pesticide Office seems to be rushing this through without coordination among the scientific community. Specifically, and most unfortunately, it has not coordinated its efforts with a major scientific initiative on exactly this issue, sponsored by California EPA and led by Professor Pamela Lein at UC Davis. This government-academic collaboration includes scientists from across the U.S., the European Union, Japan, and other countries, working together to understand the individual NAM tests, identify key characteristics of neurotoxicity and developmental neurotoxicity, and conduct a systematic review of test outcomes.<sup>4</sup> A published report is expected sometime at the end of this year or early 2021. And, yet, we were troubled to learn that the EPA Pesticide Office has not engaged in discussions with this working group, has not reached out to its members or to California EPA staff, and does not even list Dr. Lein among the candidates being considered for this panel, even though she would be among the most qualified to advise on this topic. In short, EPA's Pesticide Office is setting a timetable that will not benefit from the national dialogue on this subject, will not be aligned with the work of state agencies, and will not include input from the nation's leading experts on using NAMs to address developmental and neurotoxicity.

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<sup>2</sup> Exponent - Supplemental Statistical Analysis of Organophosphorus (OP) Pesticides In Vitro Inhibition Study. Kelly Higgins, Leila Barraj, Risk Reiss. Exponent. Sponsors: AMVAC Chemical Corporation, FMC Corporation, Gowan Company. May 28, 2020. MRID: 51182301 EPA-HQ-OPP-2020-0263-0013

Michaels, D. The Triumph of Doubt: Dark Money and the Science of Deception. Oxford University Press, 2020. P. 3, 5-6.

<sup>3</sup> <https://www.gpo.gov/fdsys/pkg/FR-2017-06-27/pdf/2017-13332.pdf>

<sup>4</sup> Key Characteristics: A New Approach to Identifying Potential Toxicants, with Martyn Smith. Ashley Ahearn. The Researcher's Perspective, Vol. 2019, No. 1. Published: 22 July 2019. <https://doi.org/10.1289/EHP5776>

The Pesticide Office is delving into a novel – and highly questionable – use of NAMs to inform uncertainty and adjustment factors (EPA Issue Paper, p. 5). No government body has used NAMs for this purpose. Yet, the Pesticide Office is not only moving into uncharted scientific territory but is doing so without the benefit of California EPA's current scientific collaborations or established scientific principles of systematic review.

Additionally, the Pesticide Office is not following accepted scientific principles for systematic review adopted by the Institute of Medicine (IOM), the National Toxicology Program (NTP) and EPA's Integrated Risk Information System (IRIS) and endorsed by the NAS and other peer review bodies. In fact, the Pesticide Office does not have such a systematic review framework or even systematic review guidelines.

The Pesticide Office's unimaginably fast timeline will prevent it from benefiting from the work of this international collaboration and will likely result in an SAP report that fails to capture the scientific consensus or the best thinking in this area, making it weak and of doubtful utility soon after it is completed.

**Request that EPA postpone the SAP meeting until at least 2021, and align with the conclusions of the California EPA working group to identify key characteristics for both neurotoxicants and developmental neurotoxicants**

In addition to requesting that EPA re-issue a call for public nominations – for at least one month, until September for the reasons below – we also ask that EPA delay the meeting of the panel. This panel is now slated for a 4-day public peer review meeting on Sept 15-18, 2020. We ask that EPA postpone the meeting until at least 2021, when the final report of the California EPA working group on key characteristics is expected to be published.

Once EPA issues invitations, the panelists will need time to prepare for the work of the panel. Experts that are affiliated with Universities or public health agencies will need extra time, due to pandemic-related duties that include digitizing classroom material to convert classes to online format and responding to pandemic-related health crises. It is for these reasons that EPA agreed to postpone its TSCA Advisory Committee peer review meeting of asbestos.<sup>5</sup> There are additional time and resource burdens that uniquely apply to people working in the field of public health or teaching at a University – people that are now almost absent from EPA's current list of candidates.

**Request that EPA re-open public call for nominations until September**

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<sup>5</sup> "EPA is postponing the Toxic Substances Control Act Science Advisory Committee on Chemicals (SACC) peer review virtual meeting scheduled for April 27-30, 2020, due to recent changes in the availability of members for this peer review." <https://www.epa.gov/chemicals-under-tsca/april-27-30-2020-tsca-science-advisory-committee-chemicals-meeting-asbestos>

In a June 17, 2020 Federal Register Notice, EPA announced a two-week period, until July 2, for public nominations of ad hoc expert reviewers to serve on this FIFRA Science Advisory Panel.<sup>6</sup> We ask that EPA re-open the request for nominations, and we have included nominees in this letter. We make this request on the basis that the short two-week comment period failed to provide the public with a meaningful opportunity to comment. Under Section 4 of the Administrative Procedure Act, a federal agency is required to provide a meaningful opportunity for public comment on any proposed rule (5 USCS § 553). EPA has been clear that opportunities for comment must be meaningful in non-rulemaking processes as well. For example, on its National Environmental Policy Act (NEPA) website, EPA states, “Agencies are required to provide meaningful opportunities for public participation” during the NEPA process.<sup>7</sup> The comment period for nominations for this panel failed to provide meaningful public engagement for the following reasons:

1. The nomination period was open for only two weeks, which is half the time EPA normally provides. For example, for the most recent SAP meeting on surface water monitoring, EPA published an FR notice on August 13 asking for nominations by September 12, 2019.<sup>8</sup>
2. Even one month is a short time to gather high quality nominations of experts with appropriate expertise in the areas of relevance for this panel, given the pandemic-related work disruptions that everyone across the nation is suffering, ranging from lack of childcare to illnesses and even deaths in families and among friends.
3. There are almost no candidates from academia (only 4 of the 21 candidates, 19%, list a university as their sole affiliation, see details below). This is likely due to EPA’s 2017 directive restricting individuals with grant funding from serving on committees.
4. A comment period is not meaningful if the Agency has already made its decision and is unwilling to consider relevant or substantive points raised in public comments.<sup>9</sup>

Although this SAP’s efforts will have wide-reaching impacts, discussed earlier in these comments, EPA received only two public submissions in response to its call for panel nominations – one from the pesticide industry, and one from an animal welfare group.<sup>10</sup> This alone is evidence that a meaningful public nomination process did not take place.

### **EPA must reopen the nominations process to comply with the law**

EPA needs to reopen the nominations process to ensure that it complies with recent court decisions and the law. Recent court decisions and EPA’s subsequent policy change require EPA to affirmatively

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<sup>6</sup> <https://www.regulations.gov/document?D=EPA-HQ-OPP-2020-0263-0001>

<sup>7</sup> How Citizens Can Comment and Participate in the National Environmental Policy Act Process, U.S. EPA, <https://www.epa.gov/nepa/how-citizens-can-comment-and-participate-national-environmental-policy-act-process>.

<sup>8</sup> Federal Register / Vol. 84, No. 156 / Tuesday, August 13, 2019. ID: EPA-HQ-OPP-2019-0417-0001.

<sup>9</sup> Cf. *Air Transport Ass’n of Am., Inc. v. Nat’l Mediation Bd.*, 663 F.3d 476, 487 (D.C. Cir. 2011).

<sup>10</sup> Comment submitted by Kristie Sullivan, Vice President for Research Policy, Physicians Committee for Responsible Medicine, ID: EPA-HQ-OPP-2020-0263-0004

Comment submitted by Cindy Smith, Chair, Coalition of Organophosphate (OP) Registrants, ID: EPA-HQ-OPP-2020-0263-0003

reinstate and ensure implementation of its prior policies to make it clear when soliciting nominations for its scientific advisory committees that EPA grantees may serve.

On October 31, 2017, EPA issued a directive entitled titled “Strengthening and Improving Membership on EPA Federal Advisory Committees,” which established a new “requirement that no member of an EPA federal advisory committee be currently in receipt of EPA grants, either as principal investigator or co-investigator, or in a position that otherwise would reap substantial direct benefit from an EPA grant.” This directive reversed decades-long EPA policies that EPA funding did not preclude service on EPA’s scientific advisory committees. Instead, EPA viewed participants in EPA-funded research as leaders in their fields who often have valuable expertise that can contribute to the integrity and rigor of peer reviews of science used by EPA.

In three separate lawsuits challenging the directive, a declaration from an EPA official who oversaw appointments to an EPA scientific advisory committee described the immediate effect of the directive. Declaration of Christopher Zarba (June 6, 2018). Before the directive, EPA staff “actively recruited qualified individuals from a range of backgrounds, including academia, non-profits, regulated industries, and trade associations,” *id.* ¶ 13, and “the receipt of EPA grant funding did not disqualify an otherwise qualified scientist from service on EPA federal advisory committees,” *id.* ¶ 15. In addition, EPA staff “placed very high priority on scientific expertise in relevant areas of science in the member selection process” and used peer-reviewed research and publications in specific areas of science as a primary indicator of scientific expertise. *id.* ¶ 18. EPA viewed EPA grantees as having such expertise and being leaders in their field of inquiry: “A scientist serving as a principal investigator on a project funded by an EPA grant is, as a general matter, a leading expert in their field of study. This is because EPA grants are highly competitive and are awarded through rigorous internal and external peer-review.” *id.* ¶ 19. The directive became mandatory and effective immediately. It led EPA staff to remove EPA grant recipients from scientific advisory committees and to preclude consideration of such grantees for committee appointments. *Id.* ¶¶ 22-25.

An official with longstanding experience with EPA scientific advisory committees testified that to the damaging effects the directive had on the expertise and diversity of views on the scientific advisory committees:

The bar on service by recipients of EPA grants has seriously damaged the ability of EPA to attract and appoint qualified scientists to serve on EPA federal advisory committees. Even as the Directive has more than doubled the turn-over on the committees, the bar on service by recipients of EPA grants shrinks the recruiting pool by disqualifying many top experts. The result is that many highly qualified experts were excluded from full consideration, limiting the range and depth of expertise and the diversity of perspectives available for the committees. In the last round of appointments and removals, the SAB Staff Office was forced to pick from a significantly reduced candidate pool. This will inevitably compromise the quality of the SAB, CASAC, and other committees.



When a committee needs particularized scientific expertise, excluding EPA grant recipients from consideration means that the qualified scientists who remain eligible will lack the diversity and balance of scientific perspectives essential to a high quality review.

*Id.* ¶¶ 26, 27; *see also id.* ¶ 28 (“I know from conversations with EPA staff that many EPA employees now view the EPA’s federal advisory committees as having a strong bias.”).

Two legal challenges to the directive prevailed. On February 10, 2020, the U.S. District Court for the Southern District of New York held that EPA acted arbitrarily and capriciously in adopting the directive because it failed to acknowledge or explain its sharp reversal of EPA’s prior policies, provided no basis for believing EPA grantees had actual or perceived conflicts of interest, and failed to consider the effect of ousting EPA grantees on the overall balance of the memberships on the advisory committees. *NRDC v. EPA*, 2020 U.S. Dist. LEXIS 22855 (S.D.N.Y. Feb. 10, 2020). The court subsequently vacated the directive, meaning “the EPA may not categorically exclude EPA grant recipients from serving on advisory committees” and “must simply return to the standards that it historically applied until those standards were altered by the Directive.” *NRDC v. EPA*, 1:19-cv-05174-DLC (S.D.N.Y. Apr. 15, 2020) at 3.

In April 2020, the D.C. Circuit Court of Appeals held that the directive was arbitrary and capricious because EPA failed to explain why it was departing from its longstanding policies. It also held that EPA violated applicable procedures requiring that any ethics rules that depart from those adopted by the Office of Government Ethics be submitted to and jointly promulgated by that office. *Physicians for Soc. Responsibility v. Wheeler*, 956 F.3d 634 (D.C. Cir. 2020).<sup>11</sup>

Rather than appeal the Southern District of New York’s vacatur order, EPA announced on June 24, that it will no longer apply this illegal policy.<sup>12</sup> As explained in EPA’s press release, both court decisions influenced EPA’s decision:

The decision not to appeal the SDNY judgment was made in light of a related decision by the U.S. Court of Appeals for the District of Columbia Circuit issued in April. Based on that subsequent decision, EPA has determined that any blanket prohibition on the participation of EPA grant recipients as special government employees in EPA advisory committees should be promulgated as a supplemental ethics regulation with the concurrence of the Office of Government Ethics.

EPA also described the impact of its decision not to appeal:

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<sup>11</sup>In between these two decisions, the U.S. Court of Appeals for the First Circuit overturned a lower court’s decision and held that the directive is judicially reviewable. *Union of Concerned Scientists v. Wheeler*, 954 F.3d 11 (1st Cir 2020).

<sup>12</sup> <https://www.epa.gov/newsreleases/epa-will-not-appeal-adverse-sdny-decision-regarding-october-31-2017-federal-advisory>

Because EPA has not promulgated such a regulation, the Agency will continue to follow the relevant policies as they existed before issuance of the 2017 Directive.

Because the directive had become so embedded in EPA's advisory committee appointment procedures and had become widely known both to EPA staff and the public, EPA had to instruct internal staff to reinstitute and apply the prior policies and screening procedures and it had to alert the public that it was inviting EPA grantees to become ad hoc committee members.

EPA's announcement came after EPA had published the Federal Register notice soliciting nominations for the upcoming SAP. It is, therefore, highly likely that EPA grantees and others who may nominate them would have believed EPA grantees were ineligible to serve on the SAP. In order to comply with the court rulings, EPA must affirmatively reinstate and ensure implementation of its prior policies and make it clear when soliciting nominations for its scientific advisory committees, like the SAP, that it is again welcoming nominations of EPA grantees. For this particular nomination process, EPA must reopen the process and publish a new notice in the Federal Register expressly describing the now-reinstated policies that govern nominations.

#### **Conflicts of interest for *ad hoc* panel members must be publicly disclosed and avoided**

EPA also has a duty under the Federal Advisory Committee Act (FACA) and the Federal Advisory Committee Act to transparently vet financial conflicts of interest that bias panel members toward undervaluing scientific evidence of health harms or adverse environmental impacts. Members of the community that review its regulatory priorities and health concerns must not financially benefit from lax or failed environmental safeguards.

The scientific credibility of the EPA is damaged by committees with real or perceived bias. The mission of the SAP is to provide credible and independent scientific analysis and peer review of the scientific and technical aspects of environmental issues to the EPA. EPA must ensure that no panel members have conflicts of interest and it must guard against a strong bias toward the perspective of regulated industries, which would undermine the credibility of the Agency and violate the Federal Advisory Committee Act. EPA should protect its objectivity, integrity, independence, and competence as its most valuable asset. The scientific credibility of the panel and the EPA is damaged by panels with real or perceived bias.

EPA committees must be composed in order to ensure that industry bias is publicly disclosed and avoided. FACA imposes requirements on agencies when they establish or utilize any advisory committee, like the SAP.<sup>13</sup> When an agency seeks to obtain such advice or recommendations it must ensure the advisory committee: is "in the public interest"<sup>14</sup>; is "fairly balanced in terms of points of view

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<sup>13</sup> 5 U.S.C. App. II, § 3(2).

<sup>14</sup> Id. App. II, § 9(2).

represented and the function to be performed”<sup>15</sup>; and will not be “inappropriately influenced by . . . any special interest, but will instead be the result of the advisory committee’s independent judgment.”<sup>16</sup>

These prohibitions call for special care with respect to the service on advisory committees of individuals whose employers or business would benefit financially from the committee’s recommendations. Here the charge to the SAP is to review an industry paper and new methods that could be used to weaken default safety factors, which would benefit registrants and those who advocate to retain pesticide uses whose registrations may depend on such methods. In light of this charge, it is questionable whether any employee of or consultant to a registrant could serve on the SAP without skirting FACA’s safeguards.

In addition to FACA’s requirements, EPA must ensure that no individual SAP member has conflicts of interest or an appearance of such a conflict. Scientists who serve on EPA’s scientific advisory committees are “special government employees,” subject to federal conflict-of-interest statutes and regulations.<sup>17</sup> As such, they are subject to executive branch-wide conflicts of interest rules codified at 5 C.F.R. parts 2635-41.

The federal ethics statutes, 5 U.S.C. App. 4 and 18 U.S.C. §§ 201-209, as amended, are “intended to prevent an employee from allowing personal interests to affect his official actions, and to protect governmental processes from actual or apparent conflicts of interests.”<sup>18</sup> The Office of Government Ethics (OGE) is charged with issuing conflicts of interest and ethics regulations for the executive branch.<sup>19</sup>

The General Services Administration (GSA), which is charged with issuing binding regulations to implement the Federal Advisory Committee Act,<sup>20</sup> has made the ethics rules applicable to agency establishment and utilization of federal advisory committees. The GSA regulations direct agencies to “apply Federal ethics rules” to prospective members in the appointment process and to review members’ “interests and affiliations . . . for conformance” with the regulations.<sup>21</sup>

The ethics rules identify conflicts of interest that preclude service as a special government employee and those that do not. Under the ethics rules, a financial interest can create an actual conflict of interest or an appearance of a conflict that disqualifies the individual from serving in a particular capacity.

Individuals are disqualified from participating in a “particular matter” in which they have a financial interest, if the matter will have “a direct and predictable effect on that interest.”<sup>22</sup> A direct and

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<sup>15</sup> Id. § 5(b)(2).

<sup>16</sup> Id. § 5(b)(3).

<sup>17</sup> Mem. Ethics Office General Counsel to Designated Agency Ethics Officials Regarding Federal Advisory Committee Appointments at 4 (Aug. 18, 2005); *Physicians for Social Responsibility*, 956 F.3d at 640.

<sup>18</sup> 5 C.F.R. § 2640.101.

<sup>19</sup> 5 U.S.C. App. 4 § 402(b)(1), (6).

<sup>20</sup> See 5 U.S.C. App. 2 § 7(c).

<sup>21</sup> 41 C.F.R. part 102-3, subpt. C, App A; 41 C.F.R. § 102-3.105(h).

<sup>22</sup> 5 C.F.R. § 2635.402(c).

predictable effect is evident when there is a “close causal link” between the government action and a financial effect.<sup>23</sup> The financial effect does not need to take place immediately for a close causal link to be established.<sup>24</sup>

The SAP will review new methods being developed to reduce public health protection from toxic pesticides and organophosphates in particular. The SAP’s recommendation and underlying methods, if adopted, would have a direct and predictable effect on any company that is a registrant of an OP or other pesticide likely to benefit from relaxed health protection. Such financial effects are real and not speculative. Accordingly, all employees of or consultant to such a company have conflicts of interest that preclude their service on the committee.

In addition to constituting a prohibited conflict of interest, such financial interests pose an impermissible appearance of a conflict. The ethics rules prohibit “any actions creating the appearance that they are violating the law or the ethical standards . . . [and] [w]hether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.”<sup>25</sup> Allowing participation on the SAP by individuals with financial ties to registrants who will benefit from a weakening of current safety standards and methods creates such an appearance. The public would not envision that such self-dealing would occur in the name of independent scientific peer review.

EPA must strictly enforce its own ethics policies regarding disclosure and financial conflicts.<sup>26</sup> Effective disclosure policies and faithful implementation of ethics rules to avoid conflicts and appearances of conflicts play an essential role in protecting EPA and committee work products. If such interests are discovered later, it may seem that either the EPA or the individual was intentionally hiding this information from the public or stacking the SAP, thereby casting doubt on the Committee’s work products, and on EPA’s ability to identify conflicts and enforce its own policies.

### **Comments on specific candidates**

#### Chemical industry nominees who we oppose:

The candidate list of 21 nominees includes six individuals who are employed by the chemical industry, either directly or as a consultant. We oppose these nominees on the basis that they have direct or indirect financial conflicts, or that their clients and financial sponsors have not been disclosed. The financial interests of candidates must be fully disclosed so EPA and the public can accurately assess the candidate’s perspectives, biases and financial conflicts. Committee membership should exclude experts

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<sup>23</sup> *Id.* § 2635.402(b)(1).

<sup>24</sup> *Id.*

<sup>25</sup> 5 C.F.R. § 2635.101(b)(14); *see also* *Id.* § 2635.502(a) (stating that a special government employee should not participate in a matter where “a reasonable person with knowledge of the relevant facts” would “question his impartiality in the matter.”).

<sup>26</sup> <https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument>

with financial interests in the matter and must, under the conflict of interest rules, exclude any individual whose employer or business might predictably be affected by the matter under consideration.

While we do not intend to disparage the qualifications or personal or professional reputations of any of the candidates, we oppose the following six individuals due to their financial interests on behalf of the regulated industries that could be directly impacted by the deliberations of this Committee:

1. Harvey Clewell works for Ramboll US Corporation, a product defense company. The relationship between Ramboll and Dow Chemical is so close that Ramboll has employees on assignment at Dow Chemical.<sup>27</sup>
2. Penelope Fenner-Crisp is a private consultant. She was employed by the International Life Sciences Institute (ILSI) from 2000-2004, which represents the food industry, which has a direct financial interest in pesticide approvals. Her biography in the candidate list fails to identify any of her current or recent clients, and otherwise fails to identify any of her financial sources. Without this information, the public is unable to evaluate whether Dr. Fenner-Crisp has any direct financial conflicts, biases, or non-financial interests. Until this is made public, we oppose her nomination.
3. Daland Juberg is identified as a consultant on the candidate list. His candidate biography says he was employed by Dow AgroSciences from 2002 until last year, 2019. Just last year, he published a defense of chlorpyrifos that listed his affiliation as an employee of Corteva AgroSciences, and his email with Dow Chemical 'drjuberg@dow.com'.<sup>28</sup> Dr. Juberg also does not identify his financial sponsors and clients, but it is reasonable to presume that his employer, Corteva, which purchased the license for chlorpyrifos from Dow, is among them, leading to a direct financial conflict with the work of this panel.
4. John Lipscomb works for the Center for Tox and Environ Health (CTEH), an industry consulting company that provides product defense support for its clients, including litigation support and expert testimony, according to the 'Making Sense of Science' company webpage.<sup>29</sup> His biography in the candidate list fails to identify any current or recent clients or funding sources. Without this information, the public is unable to evaluate whether Dr. Lipscomb has any direct financial conflicts, biases, or non-financial interests. Until this is made public, we oppose his nomination.
5. Larry Sheets works for Bayer Crop Science. Bayer is a pesticide registrant with a direct financial interest in the deliberations of this panel. This represents a direct financial conflict.

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<sup>27</sup> See LinkedIn profile for Mackenzie Brownell, on assignment at Dow Chemical, 2018 to present.  
<https://www.linkedin.com/in/mackenzie-brownell-123770157/>

<sup>28</sup> Juberg DR, Hoberman AM, Marty S, Picut CA, Stump DG. Letter to the editor regarding "safety of safety evaluation of pesticides: developmental neurotoxicity of chlorpyrifos and chlorpyrifos-methyl" by Mie et al. (environmental health. 2018. 17:77). Environ Health. 2019 Mar 15;18(1):21. doi: 10.1186/s12940-019-0454-x. Erratum in: Environ Health. 2019 May 14;18(1):47. PMID: 30871546; PMCID: PMC6419458.

<sup>29</sup> <https://www.cteh.com/service-detail/expert-services>

6. Pamela Spencer works for Angus Chemical Company. Prior to that, Dr. Spencer worked for Dow Chemical Company for 30 years, indicating an industry bias, and an appearance of a conflict of interest. There may also be a direct conflict of interest, if Dr. Spencer continues any financial relationship with her long-time recent past employer or if her current employer has registrations that could be impacted by the SAP review. If this is the case, it should be disclosed.
7. Lisa Sweeney lists her affiliation as UES, Inc. which is a consulting company whose website says that it partners with government and industry customers, including the Air Force, aerospace companies, automakers, and the Department of Energy.<sup>30</sup> Her consulting listed in her biography includes work with TERA, the product defense consulting firm founded by industry favorite, Michael Dourson, who is TERA's Director of Science.<sup>31</sup> TERA's work to misrepresent the human health risks of DuPont's PFOA chemicals was so thoroughly discredited that both of North Carolina's Republican senators, Richard Burr and Thom Tillis, said they would oppose Dourson's nomination by President Trump for an EPA science position. On chlorpyrifos, the topic of this SAP, Dow Chemical hired TERA, resulting in TERA recommending a risk estimate that was 5,000 times less protective than the EPA's value.<sup>32</sup> Relevant to the work of this SAP, Sweeney and Dourson co-published an article together in 2010, in the industry journal Reg Tox Pharm, that proposed reducing the uncertainty factors that are the topic of this SAP.<sup>33</sup> Sweeney has an industry bias and potential conflict, and possibly a direct financial conflict with the matters to be discussed at this SAP. Her clients and financial interests should be publicly disclosed.

We recognize that industry experts have information that may be valuable to the deliberations of the federal advisory committees and the policies of EPA, including for example, technical, scientific, and market data. We therefore suggest that they avail themselves of the opportunity to present information to the SAP during the public comment period, which includes both a short oral and written comment opportunities.

Animal rights groups representatives should be limited:

We are not opposed to limited representation on the panel from animal rights groups, and we do not mean our comments to disparage the qualifications or personal reputations of any of the candidates listed below. However, we ask that participation from this stakeholder perspective be limited, given that they are all the same perspective. Of the five candidates below, two were quoted as supporters in the EPA 2019 memo announcing that Administrator Wheeler was cutting funds for animal tests - Clippinger

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<sup>30</sup> <https://www.ues.com/about>

<sup>31</sup> Michaels, D. The Triumph of Doubt: Dark Money and the Science of Deception. Oxford University Press, 2020. P. 3, 5-6.

<sup>32</sup> Trump's Pick for EPA Safety Chief Argued Kids Are Less Sensitive to Toxins: If confirmed to the EPA, Michael Dourson will be in a position to set safety levels for many of the same chemicals his company was paid to defend. The Intercept. Sharon Lerner, October 3 2017.

<https://theintercept.com/2017/10/03/epa-nominee-michael-dourson-toxic-chemicals/>

<sup>33</sup> Hasegawa R, Hirata-Koizumi M, Dourson ML, et al. Proposal of new uncertainty factor application to derive tolerable daily intake. Regul Toxicol Pharmacol. 2010;58(2):237-242. doi:10.1016/j.yrtph.2010.06.006

and Sullivan – and two others – Hogberg and Smirnova – are both employed by the same center that was named in the same announcement as receiving EPA funds to develop NAMS.<sup>34</sup> We suggest that no more than one of the five candidates below be selected for the final panel:

1. Amy Clippinger, PETA
2. Helena Hogberg, Johns Hopkins University Center for Alternatives to Animal Testing
3. Lena Smirnova, Johns Hopkins University Center for Alternatives to Animal Testing
4. Kristi Sullivan, Physicians Committee for Responsible Medicine
5. Catherine Willett, Human Society International

Because we recognize that the above candidates have information relevant to the deliberations of this panel, we suggest that they present information during the public comment period.

We are not opposed to the following nominees:

We are not opposed to the following candidates *per se*, but are concerned that the biographies and information provided by EPA does not include any information regarding potential direct or indirect financial conflict disclosure statements.

1. Veronica Berrocal, UC Irvine
2. Marion Ehrich, Virginia Tech
3. David Jett, NIH
4. Olga Naidenko, Environmental Working Group
5. Sherry Parker, WuXi App Tec
6. Aramandla Ramesh, Meharry Medical College
7. David Reif, NC State
8. Emily Reinke, US Army Public Health Center
9. Andrew Rubin, Cal DPR

We ask that all candidates be required to provide a disclosure statement to be made public so that EPA and the public can accurately assess the candidate's perspectives, biases and financial conflicts. The public statement need not be more than a few sentences, and should include relevant patents, employment, collaborations, consulting, and so on, that could be seen as possible competing interests. If no competing interests exist, then this should be stated in the public statement. The disclosure policy should address both financial and nonmonetary relevant competing interests, including back at least five years and any anticipated interests in the next five years such as future contracts, collaborations, and

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<sup>34</sup> Administrator Wheeler Signs Memo to Reduce Animal Testing, Awards \$4.25 Million to Advance Research on Alternative Methods to Animal Testing 09/10/2019. <https://www.epa.gov/newsreleases/administrator-wheeler-signs-memo-reduce-animal-testing-awards-425-million-advance>

employment.<sup>35</sup> Committee membership should exclude experts with financial interests that could be impacted by the SAP review.

Additional candidates for consideration:

We are very concerned about the lack of environmental public health perspectives among the candidates. The topic of this SAP is not simply one of science, but about the appropriate application of science methods, data, and information to inform regulatory and policy decisions with the goal of protecting human health, including the most vulnerable among us. We recommend the following experts to serve on this SAP, with their affiliation and expertise noted:

- Margaret McCarthy, Professor, University of Maryland School of Medicine. Neuroendocrinology, neurodevelopment, neurotoxicology, key characteristics of neurodevelopment. See professional biosketch for details.<sup>36</sup>
- Heather Patisaul, Associate Dean of Research, Dept of Biological Sciences. NC State University. Neuroanatomical, neurobehavioral, neurotoxicology, and molecular testing methods. See professional biosketch for details.<sup>37</sup>
- Susan Schantz, Professor Emerita, Neuroscience Program, University of Illinois at Urbana-Champaign. Clinical and toxicological methods to evaluate neurotoxicity and neurobehavior, neurodevelopment and aging, epidemiology.
- Martyn Smith, Professor of Toxicology, Director of Superfund Research Program, University of California Berkeley. Key characteristics of carcinogens, key characteristics of neurotoxicants, epidemiology, environmental public health. See professional biosketch for details.<sup>38</sup>
- Christopher Portier, Professor, Dept of Toxicogenomics University of Maastricht. Molecular biology, risk assessment, bioinformatics, epidemiology, key characteristics of carcinogenesis, adverse outcome pathways, development, genomics, biostatistics. See professional biosketch for details.<sup>39</sup>

**Conclusion: Reopen nominations and postpone SAP convening**

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<sup>35</sup> Sass J. Key elements of effective and practical disclosure policies for health science journals. *Environ Health Perspect.* 2009 Jun;117(6):A233. doi: 10.1289/ehp.12620. PMID: 19590660; PMCID: PMC2702421.

<sup>36</sup> <https://www.medschool.umaryland.edu/profiles/McCarthy-Margaret/>

<sup>37</sup> <https://bio.sciences.ncsu.edu/people/hbpatisa/>

<sup>38</sup> <https://publichealth.berkeley.edu/people/martyn-smith/#:~:text=Martyn%20T.,public%20health%20and%20the%20environment.&text=Martyn%20T.,-Smith%20PhD%20is>

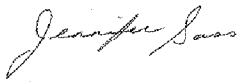
<sup>39</sup> <https://toxicogenomics-um.nl/staff/Chris-Portier>



As detailed in these comments, we recommend that the Pesticide Office re-consider this SAP in both content and timeline. We recommend that the Pesticide Office cancel this SAP until at least the new year, 2021, when it can fully consider information now under development by an international coalition that is using state-of-the-science systematic review methods to identify key characteristics of developmental neurotoxicity.

If the Pesticide Office disregards our recommendations and moves ahead with its current intention to present an industry-sponsored Exponent paper to the SAP to consider, the final product of the SAP will be of questionable value. Moreover, if the Pesticide Office selects the SAP members from this very limited candidate list, the panel will almost surely be industry-biased and publicly discredited. If either or both of these events occur, the Pesticide Office will have wasted taxpayer's money and the time of the panelists.

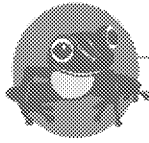
Respectfully,

A handwritten signature in cursive script, appearing to read "Jennifer Sass".

Jennifer Sass, Natural Resources Defense Council

Patti Goldman, Earthjustice

Emily Marquez, Pesticide Action Network North America



July 29, 2020

OPP Docket EPA-HQ-OPP-2020-0263  
Environmental Protection Agency Docket Center (EPA/DC)  
(28221T)  
1200 Pennsylvania Ave. NW.  
Washington, DC 20460

**Re: Selection of panel members for the new approach methodologies (NAMs) to derive extrapolation factors and evaluate developmental neurotoxicity for human health risk assessment (Docket #: EPA-HQ-OPP-2020-0263)**

Please accept the following comments on behalf of the Center for Biological Diversity (“Center”) in response to the Environmental Protection Agency’s (“EPA”) request for comments on panel selection for the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) Scientific Advisory Panel (“SAP”).

The Center for Biological Diversity (“Center”) is a non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists dedicated to the protection and restoration of endangered species and wild places. The Center has worked for twenty-six years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life. The Center’s Environmental Health Program aims to secure programmatic changes in the pesticide registration process and to stop pesticides from contaminating vital ecosystems. We appreciate the opportunity to provide comment.

The EPA is in the process of choosing expert panelists to serve on a SAP to identify new approach methodologies (NAMs) to derive extrapolation factors and evaluate developmental neurotoxicity for human health risk assessment. We support the formation of a SAP to advise EPA on how it can use NAMs in a way that ensures humans and the environment are adequately protected from harmful exposures. We want to stress how inherently uncertain this process is – the way that uncertainty is dealt with is just as important, if not more important, than how actual data points are utilized in the development of extrapolation factors.

- 1) We write this comment in full support of selecting Dr. Olga Naidenko as a panel member. Dr. Naidenko is a highly esteemed researcher whose work at the EPA and Environmental Working Group has focused on toxicology, human health risk assessment and health

benchmark development. Her work is highly relevant to the task of this particular SAP. We know her to be highly principled, balanced, thoughtful and well-respected in her field.

2) In addition to our support of Dr. Naidenko as an impartial expert panel member, we are commenting to oppose the selection of the following panel nominees.

- Dr. Penelope Fenner-Crisp
- Dr. Daland Juberg
- Dr. Larry Sheets
- Dr. Pamela Spencer

If ultimately adopted in the risk assessment process, NAMs will have a profound influence on regulation of the pesticide industry and, ultimately, the health of humans and the environment. It is of the utmost importance to ensure that the SAP is free from any panelist that has a clear conflict of interest.

Two of these nominees are currently employed with companies that would directly benefit from a particular outcome of this SAP: Dr. Sheets with Bayer CropScience and Dr. Spencer with ANGUS Chemical Company (a subsidiary of Dow Chemical Company). In addition, Dr. Spencer has worked for Dow Chemical company in the past and is currently on the Board of Directors for International Life Sciences Institute (ILSI). ILSI is a chemical-industry front group that has received considerable funding from CropLife, Monsanto, Syngenta, Dow AgroSciences, Pioneer Hi-Bred, Bayer Crop Science and BASF.<sup>1</sup>

Dr. Fenner-Crisp was Executive Director of the Risk Science Institute at the shadowy industry front group ILSI and now works as a consultant. Dr. Juberg worked previously at Dow Agrosciences and has also been Chair of ILSI/Health and Environmental Sciences (HESI), Co-Chair of the Crop Life America (CLA) Human Health Policy Steering Group and member of Crop Life International Human Health Assessment Team.

Dr. Fenner-Crisp and Dr. Juberg, along with multiple other panel nominees, are consultants, and the EPA must identify whether they are currently contracted with any group that could benefit from a particular outcome or recommendation by the SAP.

The Federal Advisory Committee Act (“FACA”) compels the EPA to ensure that any advisory committee be “...fairly balanced...” and not “...inappropriately influenced by the appointing authority or by any special interest...”<sup>2</sup> EPA’s own guidance on FIFRA SAP panelists directs the agency to identify panelists with appropriate areas of expertise while also considering the

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<sup>1</sup> Steele, S., Ruskin, G., & Stuckler, D. (2020). Pushing partnerships: Corporate influence on research and policy via the international life sciences institute. *Public Health Nutrition*, 23(11), 2032-2040. doi:10.1017/s1368980019005184; Jacobs, A. A Shadowy Industry Group Shapes Food Policy Around the World. New York Times. Sept. 16, 2019.

<sup>2</sup> Federal Advisory Committee Act. Title 5—Appendix. § 5 (b) (2) (3). Available here: <https://www.gpo.gov/fdsys/pkg/USCODE-2012-title5/pdf/USCODE-2012-title5-app-federalad.pdf>.

“...absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias.”<sup>3</sup>

The EPA has identified many capable scientists who have expertise to serve on this panel. The next step must be to identify individuals with any perceived or real conflicts of interest (financial or otherwise) and remove those individuals from consideration. From the list of nominees, it is clear that current or past employment with the chemical or pesticide industry or lobbying group will be the most relevant conflict that EPA will need to consider, however, others may also be present.

If an individual with a conflict of interest is identified that has a particularly relevant area of expertise, that individual would be better suited to present information to the panel as an invited speaker or commenter. This way, any relevant information could be obtained while maintaining the impartiality of the SAP.

The scientific independence of this FIFRA SAP, as well as the EPA, is absolutely reliant upon receiving information that is not adulterated or manipulated by the industry that is subject to regulation. To allow those with clear conflicts of interest and ties with the pesticide industry to serve on the SAP would not only stain the reputation of FIFRA SAPs in general, but would be a disservice to all the impartial members of the panel who are donating their time to give EPA solid advice on how to strengthen its risk assessment process.

Respectfully submitted,



Nathan Donley, Ph.D.  
Senior Scientist  
Environmental Health Program  
Center for Biological Diversity

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<sup>3</sup> EPA. Information On The Panel Formation Process For The EPA FIFRA Scientific Advisory Panel. September 16, 2004. Available here: [https://www.epa.gov/sites/production/files/2015-06/documents/srb\\_process\\_interviews.pdf](https://www.epa.gov/sites/production/files/2015-06/documents/srb_process_interviews.pdf).

Message

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**From:** Hughes, Hayley [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D98153A3667544CE81B60DD0B1ECBD0D-HUGHES, HAY]  
**Sent:** 7/21/2020 6:26:27 PM  
**To:** Knott, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=24d2f36208d64beaaa5fdaf7fc29bce0-Knott, Steven]; Berkley, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=44b87a2cbb1481c9c957a471f697527-BBerkley]  
**Subject:** RE: Request to reopen nomination process for EPA advisory committees

Steve,  
Please can you provide an FYI at the OSCP bi-weekly.  
Thanks,  
Hayley

Hayley Hughes, DrPH, MPH, CSP  
Director, Office of Science Coordination and Policy  
Office of Chemical Safety and Pollution Prevention  
US Environmental Protection Agency

Desk: 202.564.1116  
Email: [Hughes.hayley@epa.gov](mailto:Hughes.hayley@epa.gov)

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**From:** Knott, Steven <[Knott.Steven@epa.gov](mailto:Knott.Steven@epa.gov)>  
**Sent:** Tuesday, July 21, 2020 1:53 PM  
**To:** Hughes, Hayley <[hughes.hayley@epa.gov](mailto:hughes.hayley@epa.gov)>; Berkley, Bruce <[Berkley.Bruce@epa.gov](mailto:Berkley.Bruce@epa.gov)>  
**Subject:** FW: Request to reopen nomination process for EPA advisory committees

FYI.

sk

Steven M. Knott, M.S.  
Chemist and Executive Secretary  
FIFRA Scientific Advisory Panel and  
Science Advisory Committee on Chemicals  
U.S. EPA Office of Science Coordination and Policy  
[Knott.steven@epa.gov](mailto:Knott.steven@epa.gov)  
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**From:** Genna Reed <[GReed@ucsusa.org](mailto:GReed@ucsusa.org)>  
**Sent:** Tuesday, July 21, 2020 1:25 PM  
**To:** Wheeler, Andrew <[wheeler.andrew@epa.gov](mailto:wheeler.andrew@epa.gov)>  
**Cc:** Louie, Nica <[Louie.Nica@epa.gov](mailto:Louie.Nica@epa.gov)>; Araujo, Javier <[Araujo.Javier@epa.gov](mailto:Araujo.Javier@epa.gov)>; Armitage, Thomas <[Armitage.Thomas@epa.gov](mailto:Armitage.Thomas@epa.gov)>; O'Farrell, Thomas <[OFarrell.Thomas@epa.gov](mailto:OFarrell.Thomas@epa.gov)>; gantner.ann-marie@epa.gov; Carrillo, Oscar <[Carrillo.Oscar@epa.gov](mailto:Carrillo.Oscar@epa.gov)>; Jenkins, Fred <[jenkins.fred@epa.gov](mailto:jenkins.fred@epa.gov)>; Tracy, Tom <[Tracy.Tom@epa.gov](mailto:Tracy.Tom@epa.gov)>; Subramanian, Hema <[Subramanian.Hema@epa.gov](mailto:Subramanian.Hema@epa.gov)>; Tejada, Matthew <[Tejada.Matthew@epa.gov](mailto:Tejada.Matthew@epa.gov)>; Chu, Ed <[Chu.Ed@epa.gov](mailto:Chu.Ed@epa.gov)>; Jewell, Shannon <[jewell.shannon@epa.gov](mailto:jewell.shannon@epa.gov)>; Knott, Steven <[Knott.Steven@epa.gov](mailto:Knott.Steven@epa.gov)>; Weinstock, Larry <[Weinstock.Larry@epa.gov](mailto:Weinstock.Larry@epa.gov)>; Barnes, Edlynzia <[Barnes.Edlynzia@epa.gov](mailto:Barnes.Edlynzia@epa.gov)>; eargle.frances@epa.gov; Ward, Tracey <[Ward.Tracey@epa.gov](mailto:Ward.Tracey@epa.gov)>; Knott, Steven <[Knott.Steven@epa.gov](mailto:Knott.Steven@epa.gov)>; Yeow, Aaron <[Yeow.Aaron@epa.gov](mailto:Yeow.Aaron@epa.gov)>; O'Farrell,

Thomas <OFarrell.Thomas@epa.gov>; Green, Eugene <Green.Eugene@epa.gov>

**Subject:** Request to reopen nomination process for EPA advisory committees

July 21, 2020

Dear Administrator Wheeler:

The undersigned organizations call upon EPA to reopen the nominations process for its advisory committees to solicit nominations of individuals EPA previously deemed ineligible to serve because of their receipt of EPA grant funding, and to reinstate individuals to committees from which they were unjustifiably removed. EPA's 2017 directive restricting individuals with grant funding from serving on committees was struck down in June by the U.S. District Court for the Southern District of New York, which ruled that the policy was arbitrary and capricious under the Administrative Procedure Act.<sup>[i]</sup> Soon after, the U.S. Court of Appeals for the D.C. Circuit agreed that the directive was illegal, ruling that EPA failed to give a rational explanation for its decision to exclude highly qualified grantees and failed to obtain the approval of the Office of Government Ethics.<sup>[ii]</sup> These decisions came after the U.S. Court of Appeals for the First Circuit rejected EPA's argument that the directive was not judicially reviewable.<sup>[iii]</sup> EPA has now announced that it will no longer apply this illegal policy.<sup>[iv]</sup>

EPA grants are funded through a highly competitive process on the basis of merit and promise. Recipients tend to be among the most knowledgeable experts on the issues upon which EPA is seeking advice. That is why, when this Administration issued a directive preventing such individuals from serving on advisory committees, so many took notice and spoke out in opposition.<sup>[v]</sup> Now that the directive has been rescinded, the Agency must ensure that the most qualified individuals in their fields have the opportunity to advise on critical science and policy issues.

Many EPA grant-funded scientists are at the top of their fields and possess critical, or even irreplaceable, highly relevant knowledge that the Agency needs to make health-protective and scientifically defensible policy decisions. In light of this and the Courts' decisions noted above, EPA should now provide an opportunity for EPA grant-funded experts to apply for or be nominated to positions on all EPA advisory committees. This should be done immediately for those committees for which EPA is already in the process of identifying candidates: EPA's Science Advisory Board and subcommittees,<sup>[vi]</sup> Science Advisory Committee on Chemicals,<sup>[vii]</sup> National Drinking Water Advisory Council,<sup>[viii]</sup> and National and Environmental Government Committees.<sup>[ix]</sup>

Further, for all individuals who were removed from boards or whose terms were not renewed because they were receiving EPA funding between the time the 2017 policy was announced and the present, EPA should notify them of the change in policy, solicit their interest, and, if the individuals are interested, reinstate them onto the advisory committees on which they previously served.

Without consideration of all such eligible scientists, EPA will continue to receive insufficient science advice. Thus, we further call upon the Agency to suspend any ongoing process to fill positions on these advisory committees until the restoration of committees and the nominations process for experts EPA previously deemed ineligible is completed. These steps would not address prior flawed changes made to advisory committees' composition and structure, such as those made to the Clean Air Scientific Advisory Committee for the particulate matter NAAQS review.<sup>[x]</sup> However, they would at least allow for a more diverse, qualified, and independent composition on EPA's advisory committees and would better ensure the Agency receives the best available science advice on matters protecting the environment and public health. If you have any questions or require additional information, please contact Genna Reed at the Union of Concerned Scientists at [GReed@ucsusa.org](mailto:GReed@ucsusa.org).

Sincerely,

Center for Science and Democracy, Union of Concerned Scientists  
Earthjustice  
Environmental Defense Fund  
International Society for Children's Health and the Environment  
Natural Resources Defense Council

Physicians for Social Responsibility  
Protect Democracy

CC:

Nica Louie, DFO Children's Health Protection Advisory Committee  
Javier Araujo, DFO National Environmental Education Advisory Board  
Thomas Armitage, DFO Science Advisory Board  
Thomas O'Farrell, DFO Human Studies Review Board  
Ann-Marie Gantner, DFO Good Neighbor Environmental Board  
Oscar Carrillo, DFO National Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation and the Governmental Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation  
Fred Jenkins, DFO Hazardous Waste Electronic Manifest System Advisory Board  
Thomas Tracy, DFO Board of Scientific Counselors  
Hema Subramian, DFO Farm, Ranch and Rural Communities Advisory Committee  
Matthew Tejada, DFO National Environmental Justice Advisory Council  
Edward Chu, DFO Environmental Financial Advisory Board  
Shannon Jewell, DFO Pesticide Program Dialogue Committee  
Steven M. Knott, DFO Science Advisory Committee on Chemicals; FIFRA SAP Panel  
Larry Weinstock, DFO Clean Air Act Advisory Committee  
Edlynzia Barnes, DFO Great Lakes Advisory Board  
Frances Eargle, DFO Local Government Advisory Committee  
Tracey M. Ward, DFO National Drinking Water Advisory Council  
Aaron Yeow, DFO Clean Air Scientific Advisory Committee

Genna Reed  
Lead Science & Policy Analyst, Center for Science and Democracy  
she / her / hers

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[i] *Nat. Res. Def. Council, Inc. v. U.S. Envtl. Prot. Agency*, 438 F. Supp. 3d 220 (S.D.N.Y. 2020).

[ii] *Physicians for Soc. Responsibility v. Wheeler*, 956 F.3d 634 (D.C. Cir. 2020).

[iii] *Union of Concerned Scientists v. Wheeler*, 954 F.3d 11 (1st Cir. 2020).

[iv] U.S. Environmental Protection Agency (EPA). 2020. EPA Will Not Appeal Adverse SDNY Decision Regarding October 31, 2017 Federal Advisory Committee Directive, June 24. Online at <https://www.epa.gov/newsreleases/epa-will-not-appeal-adverse-sdny-decision-regarding-october-31-2017-federal-advisory>, Accessed July 15, 2020.

[v] Union of Concerned Scientists. 2020. Pruitt Actions on EPA Advisory Board Undermine Independent Science, Put Americans at Risk, October 31. Online at <https://ucsusa.org/about/news/pruitt-actions-epa-advisory-board>, Accessed July 15, 2020.

[vi] EPA. Request for Nominations of Candidates to the EPA's Science Advisory Board (SAB) and SAB Standing Committees. Federal Register 85, no. 63 (April 1, 2020):18225. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-01/pdf/2020-06660.pdf>, Accessed July 15, 2020.

[vii] EPA. TSCA Science Advisory Committee on Chemicals; Request for Nominations. Federal Register 85, no. 55 (March 20, 2020):16094. Online at <https://www.govinfo.gov/content/pkg/FR-2020-03-20/pdf/2020-05827.pdf>, Accessed July 15, 2020.

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[viii] EPA. The National Drinking Water Advisory Council: Request for Nominations. Federal Register 85, no. 114 (June 12, 2020):35930. Online at <https://www.govinfo.gov/content/pkg/FR-2020-06-12/pdf/2020-12727.pdf>, Accessed July 15, 2020.

[ix] EPA. Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation. Federal Register 85, no. 70 (April 10, 2020): 20267. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-10/pdf/2020-07527.pdf>, Accessed July 15, 2020.

[x] Independent Particulate Matter Review Panel. 2020. The Need for a Tighter Particulate-Matter Air-Quality Standard, June 10. *New England Journal of Medicine*. DOI: 10.1056/NEJMs2011009. Online at <https://www.nejm.org/doi/full/10.1056/NEJMs2011009>, Accessed July 15, 2020.